

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ROQUETTE FRÈRES,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 06-540 (***)
)	
SPI PHARMA, INC. and DRYTEC LTD.,)	REDACTED VERSION
)	
Defendants.)	
_____)	

**PLAINTIFF ROQUETTE FRÈRES' ANSWERING BRIEF
IN OPPOSITION TO DEFENDANT DRYTEC LTD.'S
MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION**

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NATURE AND STAGE OF THE PROCEEDING

Plaintiff Roquette Frères ("Roquette") has sued SPI Pharma, Inc. ("SPI"), a corporation chartered and headquartered in the State of Delaware, and Drytec Ltd. ("Drytec"), a UK corporation, for infringement of Roquette's U.S. Patent No. 5,573,777 ("the '777 patent"). The '777 patent covers pulverulent Mannitol of moderate friability and processes for its preparation. Roquette's patented Mannitol is a key ingredient of many food products and pharmaceuticals. In its First Amended Complaint, Roquette alleges that SPI infringes the '777 patent through the importation, sale, and offer for sale of MANNOGEM™ EZ Spray Dried Mannitol ("MANNOGEM") and that defendant Drytec has been importing MANNOGEM into the United States.

In lieu of answering the Complaint, defendant Drytec filed a motion to dismiss based on alleged lack of personal jurisdiction by this Court. All of Drytec's arguments flow from Drytec's contention that it simply has no contacts with the State of Delaware.

Contrary to Drytec's assertions, documentary evidence reveals that Drytec itself, as well as through its commonly controlled affiliated corporate entity, has persistently and directly imported significant quantities of accused Mannitol products into the United States to its contracted U.S. customer, SPI. Drytec has also supplied a system and key components of a system for the spray-drying of Mannitol directly to SPI.

Drytec's substantial and persistent business dealings with SPI, and hence with the State of Delaware, including acts of infringement from which this case arises, are sufficient to subject Drytec to this Court's jurisdiction. Accordingly, Drytec's motion should be denied.

This is Roquette's Answering Brief in opposition to Drytec's motion.

SUMMARY OF ARGUMENT

Drytec has in its own name purposefully shipped accused Mannitol to its Delaware based customer and co-defendant SPI. In concert with its commonly controlled affiliate Drytec Contract Processing Ltd ("Drytec Processing"), Drytec has *persistently* shipped Mannitol to SPI, amounting to more than 50 tons of accused Mannitol product entering the United States to the account of SPI in Delaware. In fact, co-defendant SPI has explicitly stated that the accused MANNOGEM is manufactured by Drytec exclusively for SPI.

Drytec's independent import of accused product to the account of SPI in Delaware constitutes transacting business in Delaware. Also, Drytec's exclusive agreement with SPI to manufacture and provide accused product for SPI constitutes a contract to supply services or things in Delaware. Moreover, Drytec, which in agency with its affiliate Drytec Processing engaged in a persistent course of conduct in Delaware and derived substantial revenue from services and things in Delaware, infringed the '777 patent in Delaware by importing accused product to SPI.

Accordingly, Drytec's actions satisfy each of three separate bases for this Court's jurisdiction under Delaware's long-arm statute. See 10 Del. C. § 3104(c)(1), (2) and (4).

Subjecting Drytec to the jurisdiction of this Court also comports with due process. Drytec's multiple shipments and sales to the account of SPI in Delaware constitute purposeful minimum contacts with the State of Delaware. Drytec could well have expected being haled into the Delaware courts to answer for any of its contractual obligations with its co-defendant SPI.

STATEMENT OF FACTS

The sole support for Drytec's motion is the Declaration of Paul C. Kennet, the managing director of Drytec. (D.I. 21, "Dec."). In his Declaration, Mr. Kennet recites Drytec's lack of an office, employees, real property, and mailing or telephone listing in the State of Delaware (Dec. ¶¶ 7-9, 11), allegations which are not challenged for purposes of this opposition.

Mr. Kennet's declaration goes on, however, to assert that Drytec has never transacted business or performed any character of work or service in Delaware (Dec. ¶ 12); that it derives no revenue from any customers or any other business in Delaware (Dec. ¶ 14); that it has never contracted to do any business related to Mannitol products with SPI (Dec. ¶ 15); and that Drytec has never made, offered to sell or sold any Mannitol product in the United States nor has it imported any Mannitol product into the United States (Dec. ¶¶ 16-17). These statements are demonstrably inaccurate.

In fact, and contrary to Mr. Kennet's declaration, Drytec has admittedly supplied a system and key components of a system for the spray-drying of Mannitol directly to SPI. (Kennet Dep. p. 11, line 20 - p. 12, line 4) (Exhibit 1). More importantly, documentary evidence reveals that Drytec, itself and through its commonly controlled affiliated corporate entity, has directly imported significant quantities of infringing Mannitol products into the United States for its Delaware customer, SPI. (Exhibit 2). In fact, documentary evidence identifies SPI as Drytec's *exclusive* customer for the accused MANNOGEM product. (Exhibit 3).

As set forth in greater detail herein, the undocumented assertions of a lack of contact with Delaware in Mr. Kennet's declaration are repeatedly inconsistent with the

written evidence, and there is more than sufficient cause to maintain jurisdiction over Drytec for its purposeful acts of infringement.

ARGUMENT

This Court determines its own jurisdictional reach under a two-part test. E.g., ICT Pharm. v. Boehringer Ingelheim Pharm., 147 F. Supp. 2d 268, 271 (D. Del. 2001). First, the Court determines whether any part of Delaware's long-arm statute reaches the defendant. Id. Delaware Courts construe the long-arm statute "liberally so as to provide jurisdiction to the maximum extent possible." Id. (quoting Boone v. Oy Partek Ab, 724 A.2d 1150, 1156-57 (Del. Super. 1997)). Then, the Court determines whether imposing jurisdiction comports with constitutional notions of due process. Id.

This Court's jurisdiction over Drytec satisfies both prongs of that two-part test.

I. THE DELAWARE LONG-ARM STATUTE AUTHORIZES EXERCISING PERSONAL JURISDICTION OVER DRYTEC

This Court has three independent bases for exercising jurisdiction over Drytec under Delaware's long-arm statute, 10 Del. C. § 3104(c). Section 3104(c) provides:

As to a cause of action brought by any person arising from any of the acts enumerated in this section, a court may exercise personal jurisdiction over any nonresident, or his personal representative, who in person or through an agent:

- (1) Transacts any business or performs any character of work or service in the State;
- (2) Contracts to supply services or things in this State; ...
- (4) Causes tortious injury in the State or outside of the State by an act or omission outside the State if he regularly does or solicits business, engages in

any other persistent course of conduct in the State or derives substantial revenue from services, or things used or consumed in the State . . .

Under the "transacting business" provision of § 3104(c)(1), Drytec's direct sale and importation of infringing MANNOGEM product to the account of SPI in Delaware is sufficient to invoke this Court's specific jurisdiction. See Philips Elec. N. Am. Corp. v. Contec Corp., Civ. A. 02-123-KAJ, 2004 WL 503602, at *5 (D. Del. March 11, 2004) (finding specific personal jurisdiction under § 3104(c)(1) over nonresident manufacturer of imported infringing products).¹

Under the "contracts" provision of § 3104(c)(2), Drytec's agreement with SPI to act as SPI's exclusive source of the accused MANNOGEM, as well as Drytec's agreements underlying each documented import, are also sufficient to invoke this Court's specific jurisdiction. See Moore v. Little Giant Indus., Inc., 513 F. Supp. 1043, 1048 (D. Del. 1981) (finding specific jurisdiction § 3104(c)(2) over nonresident manufacturer based on contract with resident for sale of allegedly defective product).

Under the "tortious injury" provision of § 3104(c)(4), Drytec's numerous imports of infringing MANNOGEM to SPI, contractual agreements with SPI, derivation of substantial revenue from its business dealings with SPI, and provision of services and drying equipment to SPI, all performed itself or in conjunction with its co-owned and commonly controlled sister corporation Drytec Processing, are sufficient to invoke this Court's *general* jurisdiction. See Wesley-Jessen Corp. v. Pilkington Visioncare, Inc., 863 F. Supp. 186, 188-89 (D. Del. 1993) (attributing to defendant corporation the acts of its commonly owned affiliate corporation for purpose of determining jurisdiction where the

¹ This unreported case is appended hereto as Exhibit 8.

affiliates divided business tasks but otherwise operated "in lockstep as part of a larger . . . business group"); Applied Biosystems, Inc. v. Cruachem, Ltd., 772 F. Supp. 1458, 1464 (D. Del. 1991) (attributing to defendant corporation the acts of its commonly owned affiliate corporation for purpose of determining jurisdiction based on "the extent of overlap of officers, directors, and personnel, as well as the joint advertising, shared finances, and general intercorporate structure . . .").

A. Drytec Transacts Business With And Receives Revenue For Mannitol Production Equipment From SPI

As admitted by Mr. Kennet during his deposition, Drytec was the supplier of a "key" component (Mr. Kennet's choice of term) for a SPI spray fluid bed drying plant for Mannitol H.S. and EZ. (Dep. at p. 11, line 20 - p. 12, line 4). Moreover, after additional questioning, Mr. Kennet admitted that Drytec had received and recorded revenue from the sale of the key component of SPI's U.S. spray drying plant. (Dep. at p. 32, lines 2-21).

Drytec apparently hoped to rely upon a contention that the installation physically was accomplished by Drytec North America, Inc., another commonly owned sister corporation of Drytec. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Drytec's counsel proposed that prior to the jurisdictional discovery deposition of Mr. Kennet, Drytec would produce the documents upon which it would rely

to contest jurisdiction and Roquette would produce its documents that support the allegation of jurisdiction over Drytec.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

When asked what the quotation document produced by Drytec was, Mr. Kennet replied:

A It is a quotation submitted through **OUR North American office** for equipment supply, key parts and engineering equipment supply for spray dryer system.

Q And who was the intended customer?

A SPI were, Pharma.²

(Dep. p. 11, lines 3-9)(emphasis added).

Under any reading of the quotation, installation, and payment to Drytec, the statements in Mr. Kennet's declaration that "Drytec derives no revenue from any client, consumers, customers or any other business in Delaware" (Dec. ¶ 14) and "Drytec has never contracted to do any business related to mannitol products with SPI Pharma, Inc." (Dec. ¶ 15) are clearly incorrect.

² Mr. Kennet noted that the facility where the equipment was installed was an SPI Pharma plant in Michigan. This, of course, does not overcome the fact that the negotiations underlying the contract and the source of funds to Drytec Ltd. for supplying equipment under the contract, all were performed by Pharma SPI Inc. of Delaware.

Later in his deposition, after again confirming that the installation was made by "OUR American Company" (emphasis added) (Dep. p. 12, line 9), Mr. Kennet asserted that the contract was not between Drytec Ltd. and SPI Pharma. (Dep. p. 13, lines 1-3). Later however, after considerable fencing regarding the identity of the contracting partner, (Dep. p. 31, line 3 through p. 32, line 21), Mr. Kennet finally conceded his understanding that Drytec Ltd. recorded income for its supply of an atomizer which it understood was for SPI Pharma, Inc.'s plant in the United States.

Curiously, during the preliminary verbal fencing, Mr. Kennet tried to disassociate Drytec from its role in the transaction by stating that "as a contracted business, there needs to be a piece of paper, presumably, there needs to be a formal contract to do business" (Dep. p. 31, lines 18-20). A few moments later, however, when pressed for details of the sale of Mannitol drying equipment manufactured by Drytec, Mr. Kennet rebuffed his own prior contention.

Q Was there any kind of a contract between Drytec Limited and Drytec North America with respect to the sale of the spray drying equipment, the Mannitol spray drying equipment?

A I'm not sure if there was anything formally written. Certainly there would have been an understanding.

(Dep. p. 35, lines 5-11).

Thus, Drytec knowingly manufactured key components of an infringing Mannitol spray drying installation for delivery to SPI in the United States. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Furthermore, any pretense that Drytec through its managing director Mr. Kennet and SPI of Delaware were not directly involved is refuted by Mr. Kennet's testimony that he met with SPI executives. (Dep. p. 33, line 17 through p. 34, line 5). One of those persons was Colleen N. Blackney, who is the marketing manager of SPI, whose office is in New Castle, Delaware, and who authored SPI's statement that Drytec manufactures the accused MANNOGEM *exclusively* for SPI.

It is difficult to understand how Drytec Ltd. can contend that it does no business with SPI and that SPI has never been one of its customers.

B. Drytec Sold MANNOGEM Directly to SPI

As previously noted, Mr. Kennet's Declaration was adamant that Drytec derives no revenues from customers in Delaware (Dec. ¶ 14); that Drytec has never contracted to do any business with mannitol products with SPI Pharma Inc. (Dec. ¶ 15); that Drytec has never made, used, offered to sell, or sold any mannitol product in the United States, nor has it imported any mannitol product into the United States (Dec. ¶ 16); and that Drytec has never made, used, offered to sell, or sold any MANNOGEM product in the United States, nor has it imported any MANNOGEM product into the United States. The statements are inaccurate.

As noted, the parties agreed to exchange the documents which they intended to use in support of their respective contentions regarding jurisdiction. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Moreover, initially Mr. Kennet flatly denied that Drytec has any Mannitol drying facilities.

Q Does Drytec Limited have any drying facilities?

A No.

(Dep. p. 20, lines 12-14).

However, when asked if Drytec holds itself out as willing to do drying projects in support of sales, Mr. Kennet corrected his prior answer and admitted to the existence of Drytec's Mannitol product drying facilities. (Dep. p. 20, lines 15-22). The belated concession that Drytec does indeed dry Mannitol products in England for sale to its customers is consistent with information which Drytec itself promulgates on its own website (Exhibit 5), in which Drytec identifies itself as providing "Contract Drying" services.

Notwithstanding the belated concession of capability, Mr. Kennet continued to deny that Drytec dried Mannitol products for customers in the United States. He attempted to disassociate Drytec from this activity by suggesting that it was carried out by Drytec Processing.⁴

⁴ In trying to make this distinction, Mr. Kennet further confirmed the relationship between Drytec and SPI Pharma that the contract drying operation was "under strict instructions of the clients, clients prescribing every aspect of the process." (Dep. Page 23, lines 7-10). Thus, according to Mr. Kennet's testimony, Delaware based and chartered SPI gave Drytec strict instructions which prescribed every aspect of Drytec's contract drying of Mannitol for SPI's import and account. As noted, SPI states that it is Drytec Ltd.'s "exclusive" customer for MANNOGEM. (Exhibit 3).

Mr. Kennet then was shown Exhibit 2 which is a series of import recordations made by PIERS Imports (U.S. Ports). The PIERS database, published by the Dialog Corporation, a Thompson Company, is comprised of information obtained by vessel manifests and U.S. Customs Automated Manifest Systems (AMS) from all U.S. ports. (Exhibit 2, p. 1).

The first import record shown to Mr. Kennet during his deposition disclosed the import by SPI of more than 30,000 pounds of Mannitol powder from "Drytec" in April of 2006. (Exhibit 2, pp. 2-3). Mr. Kennet said that this material was exported by Drytec Contract Processing. He said that that was "[b]ecause Drytec Contract Processing is the only company with any Mannitol association, with any client in the United States that produced Mannitol."⁵ (Dep. p. 26, lines 20-22).

Questioned further with respect to the origin of the shipment, Mr. Kennet took the position that the legal name of the company identified in its documents as responsible for the export governed and was binding on the identifying party. He insisted that that party had to be Drytec Contract Processing. (Dep. page 27, lines 7-18).

Unfortunately for Drytec's argument, Mr. Kennet next was shown the next PIERS import recordation which showed that 300 drums (35,540 pounds) of Mannitol were exported by Drytec Ltd. to SPI Pharma. (Exhibit 2, p. 4).

Next Mr. Kennet was shown a third PIERS import recordation showing the import by SPI Pharma of an additional 298 kegs (35,301 pounds) of Mannitol powder in November of 2004, from Drytec Contract Processing. (Exhibit 2, p. 5).

⁵ This testimony is obviously inconsistent with Mr. Kennet's admission of Drytec Ltd.'s manufacture and sale of Mannitol drying equipment to SPI.

Thus, there are three examples of the sale and export of Mannitol products from Drytec's location in Tonbridge, England, a location which is coextensive with the facilities of Drytec Contract Processing. Mr. Kennet grudgingly admitted that Drytec does indeed have facilities for drying Mannitol, an admission which is consistent with the advertised capabilities of Drytec as publicized on its own website.

Exhibit 2 indicates that at least one very significant recent shipment was made by Drytec Ltd. Mr. Kennet's testimony of unawareness does not overcome the unquestioned documentary evidence as to who the exporter was. Moreover, the presence of another recordation of import by Drytec Contract Processing establishes quite clearly that the companies under Mr. Kennet's common supervision as the Managing Director can, indeed, distinguish between and determine the identity of the exporting company.

A document supplied by Roquette to Drytec's counsel as part of the agreed exchange of the documents upon which the parties would rely, but a document not utilized at Mr. Kennet's deposition adds further weight to the conclusion that, contrary to its opposition papers, Drytec is SPI's exclusive MANNOGEM supplier. The document, (Exhibit 3), is a 2005 letter from Colleen Blackney, Marketing Manager, SPI Pharma, Inc. re **Manufacture of Mannogem™ EZ Spray Dried Mannitol** (emphasis in original). It states:

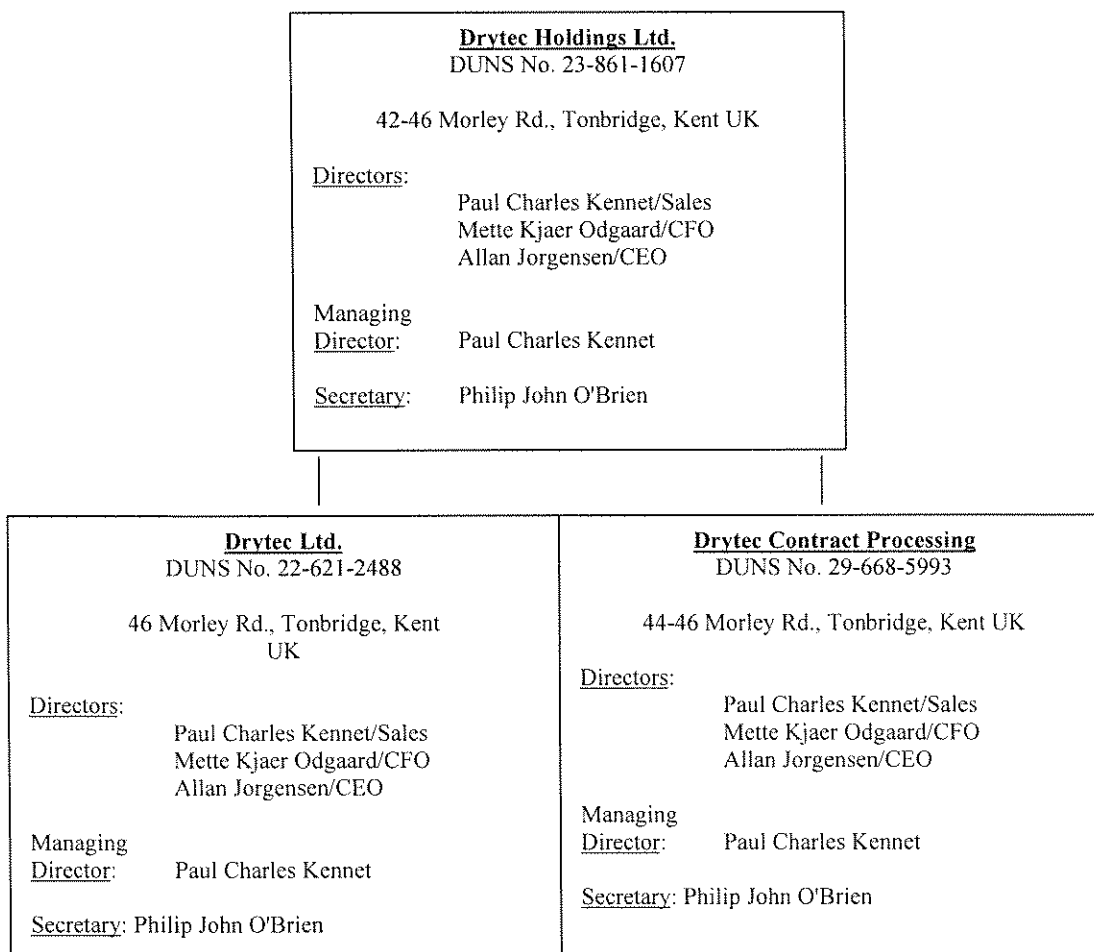
The above product is manufactured exclusively for SPI Pharma Inc. in the U.K. at the following location:

Drytec Ltd.
Morley Road
Tonbridge
Kent, TN9 1RA
England

Despite Mr. Kennet's lack of recollection or disclaimer of awareness, it appears indisputable that SPI, the U.S. Customs Service, and presumably Drytec itself since it would have been party to fill in the shipping and import documents, all believe that Drytec is importing the products in suit into the United States for the account of SPI. SPI further states that SPI is Drytec's exclusive MANNOGEM customer.

C. Drytec and Drytec Contract Processing Are, Essentially, the Same Company

As evidenced by the PIERS Import data, both Drytec and Drytec Contract Processing, as well as an entity identified only as Drytec, all have imported accused infringing product into the United States. In fact, they are the same company.



The above chart describes the interrelationship in 2006, among Drytec Holdings Ltd., Drytec Ltd. and Drytec Contract Processing, as reflected in their respective Dunn & Bradstreet Reports. Central to the analysis is the fact that each of these entities shares an identical address and each of them had identical overlap in the key executive positions.

For purposes of satisfying the Delaware long-arm statute, the actions of Drytec Processing are attributable to Drytec. The statute explicitly encompasses actions that the defendant performed "in person or through an agent." 10 Del. C. § 3104(c). This Court has consistently held that sufficiently affiliated sister companies act as agents for each other for purposes of determining jurisdiction under Delaware's long-arm statute. Wessley-Jessen Corp., 863 F. Supp. at 188-189; Applied Biosystems, Inc., 772 F. Supp. at 1463-64. The factors relevant to determining such an agency relationship between sister companies include "the extent of overlap of officers and directors, methods of financing, the division of responsibility for day-to-day management, and the process by which each corporation obtains its business." Applied Biosystems, Inc., 772 F. Supp. at 1463. Thus, even where manufacturing and distribution tasks are divided between the sister companies, they are considered agents of each other if they are wholly owned subsidiaries of a common parent, operating in "lockstep as part of a larger . . . business group." Wessley-Jessen Corp., 863 F. Supp. at 188.

Here, the directorship of Drytec and Drytec Processing not only overlap; they are identical. Moreover, Mr. Kennet identified himself as "managing director responsible for all commercial and fiscal matters of Drytec Limited," as well as "managing Director" of all three Drytec Companies in the U.K. (Dep. p. 16, lines 14-21).

The Drytec group of companies in the U.K. present themselves as a single entity for the purpose of soliciting and conducting business. Mr. Kennet admitted that Drytec's parent corporation affirmatively seeks to "unify the world market or world representation" of the Drytec U.K. companies. (Dep. p. 17, line 20 through p. 18, line 2). Even Mr. Kennet failed to recognize any distinction between the Drytec companies when, in his deposition, he stated that he has no employment "other than with Drytec," despite the fact that Mr. Kennet is the managing Director of all three Drytec companies in the U.K. (Dep. p. 8, lines 10-12).

Mr. Kennet similarly acknowledged the unified operations of Drytec and its U.S. affiliate, Drytec North America. Specifically, Mr. Kennet stated that the "key parts and engineering" for SPI's mannitol spray-drying facility were supplied "through our Drytec North America." (Dep. p. 11, line 20 through p. 12, line 20). Moreover, Mr. Kennet admitted that in fulfilling its quotation to SPI, Drytec and its North American company apparently operated under an informal understanding, (Dep. p. 35, lines 5-21), despite Mr. Kennet's earlier assertion that for different companies to do business [t]here needs to be a formal contract." (Dep. p. 31, lines 18-22).

The affiliated companies apparently obtain their business of contract drying through advertisement on the webpage of Drytec Ltd. (See Exhibit 5). Exhibit 5 is a printed version of Drytec's webpage, www.drytecdryers.com, as it existed on December 14, 2006, identifying a U.K. office and a North American office. Notably, Drytec Processing is not mentioned. Despite the complete absence of any reference to Drytec Processing, Drytec's webpage advertised CONTRACT DRYING." (Exhibit 5, p. 2). Drytec promoted its Contract Drying business by proclaiming, "[t]he Drytec Contract

Drying operation is one that is in constant demand from the company's many customers who do not wish to invest unnecessarily in expensive capital equipment." (Exhibit 5, p. 3). Finally, potential customers interested in Drytec's contract drying services are directed to contact either John Betts at Drytec North America or Paul Kennet at Drytec Ltd. (Exhibit 5, p. 4).

Drytec's parent, Anhydro, confirms and reiterates Drytec's promotions on its own website. (Exhibit 6). Exhibit 6 is a printed page taken from Anhydro's webpage, www.anhydrogroup.com, as it existed on December 22, 2006, which describes its wholly owned Drytec Ltd. as comprising a U.K. office and a North American office. Anhydro further proclaims that at its Drytec Ltd. company, "[c]ontract spray drying facilities [are] available." (Exhibit 6).

Recently, Anhydro announced that it had reorganized its companies into an even more unified and singular business. (Exhibit 7). Specifically, Anhydro announced its "realignment of the company organization, uniting the member companies under a single Anhydro brand." (Exhibit 7).

For all the foregoing reasons, it is apparent that Drytec, Drytec Processing and Drytec North America are effectively a single entity, operating in lockstep as part of their larger business group to provide equipment and contract drying services. The relationship between Drytec and its sister companies was so overlapping and so under common control as to render the various companies the agent of each other. Therefore Drytec is at once responsible for its own imports and direct business dealings with SPI, for the additional imports which Mr. Kennet claims were made for the account of Drytec

Processing, and for the installation of SPI's mannitol spray-drying plant, which Mr. Kennet claims were made for the account of Drytec North America.

II. EXERCISING JURISDICTION COMPORTS WITH DUE PROCESS

The exercise of personal jurisdiction satisfies due process when the defendant engaged in "certain minimum contacts . . . such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.' " Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) (quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940)). Minimum contacts are established when the defendant "purposefully avails itself of the privilege of conducting activities within the forum State." Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475 (1985) (quoting Hanson v. Denckla, 357 U.S. 235, 253 (1958)), such that the defendant could have anticipated being haled into the courts of the forum State, World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 291-92 (1980). Courts may also consider the relative burden imposed on the foreign defendant and the interests of the plaintiff and the forum State. Asahi Metal Indus. v. Superior Court of California, 480 U.S. 102, 114 (1987).

Drytec's documented conduct more than satisfies the requisite minimum contacts. Drytec purposefully availed itself of the privileges and laws of Delaware when it contracted with, sold to, and exported to the Delaware-based SPI company. Any of Drytec's direct business relationships with SPI would have given Drytec advanced notice that it could anticipate being haled into the Delaware courts. Finally, any inconvenience imposed on Drytec in having to return to Delaware for this case is slight in comparison to the countervailing interests of Roquette, in defending against infringement of its patent that occurred in this State, and the interests of Delaware in policing its resident

corporations and efficiently considering Roquette's claim that arises from the concerted actions of both SPI and Drytec.

CONCLUSION

For the foregoing reasons, Plaintiff Roquette respectfully requests that Drytec's motion to dismiss for lack of personal jurisdiction be denied.

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/s/ Benjamin J. Schladweiler

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Original Filing Date: February 9, 2007
Redacted Filing Date: February 16, 2007

735455

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on February 16, 2007, I electronically filed the foregoing with the Clerk of the Court using CM/ECF which will send notification of such filing to the following:

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Additionally, I hereby certify that true and correct copies of the foregoing were caused to be served on February 16, 2007 upon the following individuals in the manner indicated:

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EXHIBIT 1

Capital Reporting Company

Page 1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF DELAWARE
3 Civ No 06-540

4 ROQUETTE FRERES,

Plaintiff,

5 v SPI PHARMA, INC., and DRYTEC LTD.,

6 Defendants.

7
8 ORAL DEPOSITION OF PAUL KENNET

9 Taken at Morgan Lewis & Bockius,
10 2 Gresham Street, London EC2V 7PE, England,
 on Tuesday 16 January 2007 at 12.00 pm

11 Reported by Mrs. Claire Hill.

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<p style="text-align: right;">Page 2</p> <p style="text-align: center;">APPEARANCES</p> <p>1 For the Plaintiff:</p> <p>2 YOUNG & THOMPSON</p> <p>3 745 South 23rd Street</p> <p>4 Arlington, VA 22202</p> <p>5 By: MR. DOUGLAS V. RIGLER</p> <p>6 For the Defendants:</p> <p>7 SERLE COURT</p> <p>8 6 New Square</p> <p>9 Lincoln's Inn</p> <p>10 London WC2A 3QS</p> <p>11 By: MS. RUTH HOLTHAM</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">Page 4</p> <p style="text-align: center;">PROCEEDINGS</p> <p>1 Tuesday 16 January 2007 (12.03 pm)</p> <p>2 PAUL KENNET,</p> <p>3 having been sworn,</p> <p>4 testified as follows:</p> <p>5 DIRECT EXAMINATION</p> <p>6 BY MR. RIGLER:</p> <p>7 Q Could you state your name and address for</p> <p>8 the record, please?</p> <p>9 A Paul Kennet, 6 Strachey Close, Reading</p> <p>10 RG8 8EP.</p> <p>11 Q What is your present occupation, please?</p> <p>12 A I'm managing director of Drytec Limited.</p> <p>13 Q Have you seen the complaint in this</p> <p>14 action, the amended complaint?</p> <p>15 A I have.</p> <p>16 Q And you understand that it is brought in</p> <p>17 the United States District Court in the State of</p> <p>18 Delaware, and Drytec Limited has been named as a</p> <p>19 defendant?</p> <p>20 A I do.</p> <p>21 Q And you executed a declaration in support</p> <p>22</p>																		
<p style="text-align: right;">Page 3</p> <p style="text-align: center;">INDEX</p> <table border="0"> <tr> <td style="text-align: left;">WITNESS</td> <td style="text-align: right;">PAGE</td> </tr> <tr> <td>PAUL KENNET</td> <td style="text-align: right;">4</td> </tr> <tr> <td colspan="2">DIRECT EXAMINATION BY MR. RIGLER</td> </tr> <tr> <td colspan="2" style="text-align: center;">EXHIBITS</td> </tr> <tr> <td style="text-align: left;">EXHIBIT NO</td> <td style="text-align: right;">PAGE</td> </tr> <tr> <td>Drytec 1 Cover letter plus D 000001 - 10</td> <td></td> </tr> <tr> <td>35</td> <td></td> </tr> <tr> <td>Drytec 2 Piers Imports accumulation (5 pgs)</td> <td style="text-align: right;">24</td> </tr> <tr> <td>Drytec 3 Declaration (4 pgs)</td> <td style="text-align: right;">35</td> </tr> </table> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	WITNESS	PAGE	PAUL KENNET	4	DIRECT EXAMINATION BY MR. RIGLER		EXHIBITS		EXHIBIT NO	PAGE	Drytec 1 Cover letter plus D 000001 - 10		35		Drytec 2 Piers Imports accumulation (5 pgs)	24	Drytec 3 Declaration (4 pgs)	35	<p style="text-align: right;">Page 5</p> <p>1 of a motion challenging jurisdiction over Drytec in that</p> <p>2 action?</p> <p>3 A Yes.</p> <p>4 Q And you are represented here today by a</p> <p>5 barrister, and you also have had the opportunity to</p> <p>6 consult with a solicitor from Morgan Lewis?</p> <p>7 A Yes.</p> <p>8 Q Have you been deposed previously?</p> <p>9 MS. HOLTHAM: Objection, privileged.</p> <p>10 MR. RIGLER: That's not the least bit</p> <p>11 privileged. It simply isn't. Are you instructing the</p> <p>12 witness not to answer?</p> <p>13 MS. HOLTHAM: Yes, I'm instructing him not to</p> <p>14 answer.</p> <p>15 Q Have you ever been a defendant in any</p> <p>16 type of legal proceeding?</p> <p>17 A Yes, I think so.</p> <p>18 Q On how many occasions, in what sort of</p> <p>19 proceedings, please?</p> <p>20 A It was one previous proceeding, and it</p> <p>21 was a commercial defense, or commercial litigation, as</p> <p>22 far as I know.</p>
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<p style="text-align: right;">Page 6</p> <p>1 Q What was the nature of the litigation?</p> <p>2 A It was confidentiality of technical data.</p> <p>3 Q And were you personally a defendant in</p> <p>4 the action?</p> <p>5 MS. HOLTHAM: Objection, the scope of this</p> <p>6 deposition is limited to the facts and matters set out</p> <p>7 in Mr. Kennet's statement.</p> <p>8 MR. RIGLER: I'm aware that this is a</p> <p>9 jurisdictional deposition; nonetheless, I'm entitled to</p> <p>10 inquire into the background of the witness, with respect</p> <p>11 to any prior litigation in which he has been a party.</p> <p>12 Q You may answer.</p> <p>13 A I wasn't personally a defendant, no.</p> <p>14 Q A company with which you were associated</p> <p>15 was accused of violating a confidentiality agreement?</p> <p>16 A The company that I was working for was</p> <p>17 named as a defendant, not me personally, I was defending</p> <p>18 the company, representing the company.</p> <p>19 Q What company was that, please?</p> <p>20 A It was Drytec.</p> <p>21 Q Who was the other party to the</p> <p>22 litigation?</p>	<p style="text-align: right;">Page 8</p> <p>1 A Certainly, I have worked for a number of</p> <p>2 -- only in the U.K., for a number of U.K. companies,</p> <p>3 always in engineering. In the last company I worked</p> <p>4 for, I was initially senior process engineer, and then</p> <p>5 rose to sales director, transferred in 2001 to Drytec as</p> <p>6 sales director, and became managing director in 2004.</p> <p>7 Q Do you have any other employment?</p> <p>8 MS. HOLTHAM: Objection, question vague as to</p> <p>9 form.</p> <p>10 A Any other employment, you say?</p> <p>11 Q Yes.</p> <p>12 A Other than with Drytec? No, I don't.</p> <p>13 Q I notice on your card that your card says</p> <p>14 Anhydro.</p> <p>15 A Anhydro, yes. Drytec Limited changed its</p> <p>16 name as of 1 January to Anhydro U.K. Limited, so the</p> <p>17 card's not even right, it was done by our parent</p> <p>18 company, Anhydro, in Denmark. They jumped the gun</p> <p>19 slightly. But formally, Drytec Limited is -- as of 1</p> <p>20 January this year, is Anhydro U.K. Limited. No other</p> <p>21 changes have been effected.</p> <p>22 Q Did you bring any documents with you</p>
<p style="text-align: right;">Page 7</p> <p>1 A The other party was -- the plaintiff, you</p> <p>2 mean?</p> <p>3 Q Yes.</p> <p>4 A The plaintiff was Borozene (?) Inc.</p> <p>5 Q And can you tell me the year in court?</p> <p>6 A The year was -- that the deposition was</p> <p>7 made, or that the file was suited, the litigation was</p> <p>8 filed? The litigation was filed in 2006.</p> <p>9 Q And the court was?</p> <p>10 A It's still proceeding, the litigation.</p> <p>11 Q Can you tell me a little bit about your</p> <p>12 background, what is your educational background?</p> <p>13 A I am a chartered engineer, a graduate</p> <p>14 chemical engineer, and a member of the Institute of</p> <p>15 Chemical Engineers in the U.K.</p> <p>16 Q May I ask which universities?</p> <p>17 A Which universities?</p> <p>18 Q Yes, please.</p> <p>19 A University of Cape Town, which is not in</p> <p>20 America.</p> <p>21 Q And not in any great detail, but can you</p> <p>22 briefly tell me about your employment history?</p>	<p style="text-align: right;">Page 9</p> <p>1 today?</p> <p>2 A I have not brought any documents with me</p> <p>3 today.</p> <p>4 Q Were you asked to search for any</p> <p>5 additional documents?</p> <p>6 A I was requested to bring some documents,</p> <p>7 if I could find any, yes.</p> <p>8 Q Were you able to locate any documents?</p> <p>9 A No.</p> <p>10 Q I won't clutter up the record with</p> <p>11 needless paper, since this is before the court, but let</p> <p>12 me show you the declaration of Paul C. Kennet and ask if</p> <p>13 you recognize this document. (Handed).</p> <p>14 A Yes.</p> <p>15 Q And you read it and subscribed to it?</p> <p>16 A I have and do.</p> <p>17 Q And I take it you had the assistance of</p> <p>18 counsel when the document was prepared?</p> <p>19 A Yes, I did.</p> <p>20 Q Were you asked to search for any</p> <p>21 documents in connection with the declaration you signed</p> <p>22 in this action?</p>

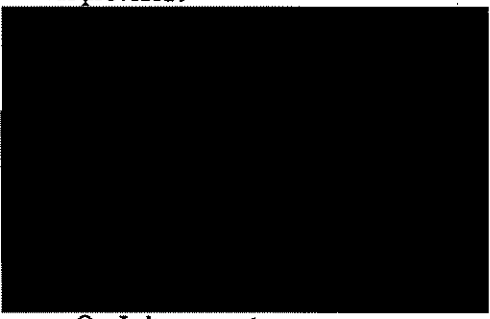
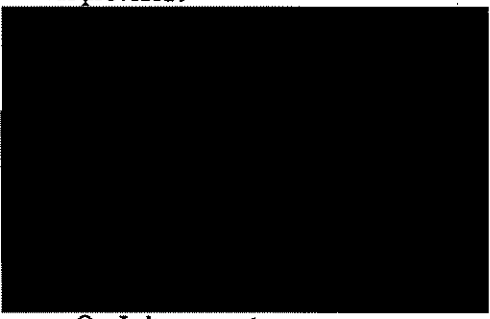
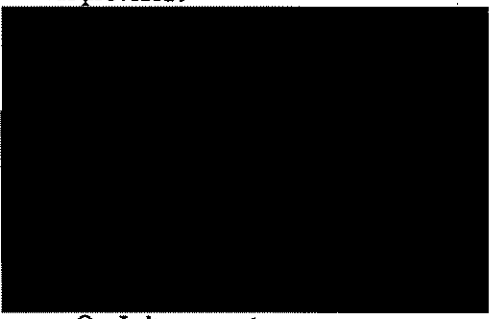
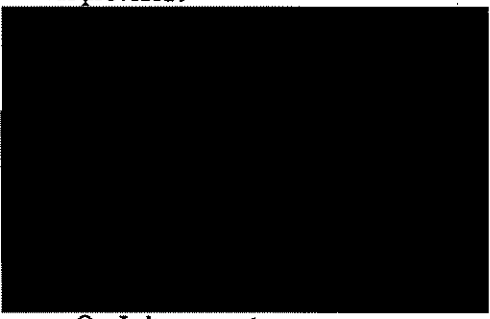
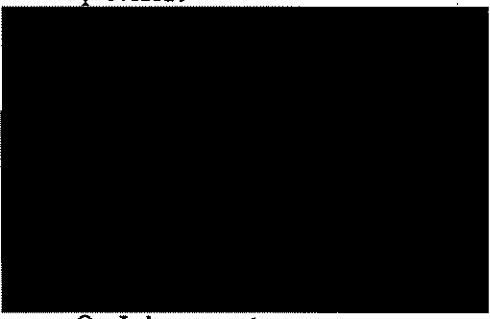
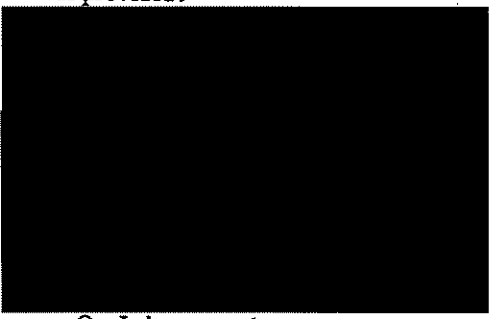
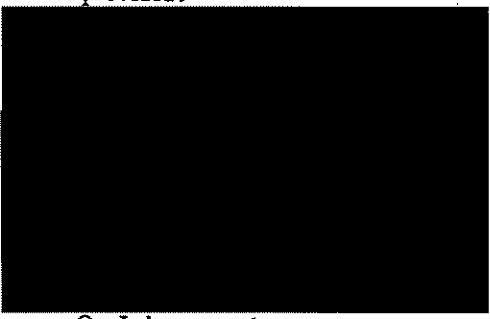
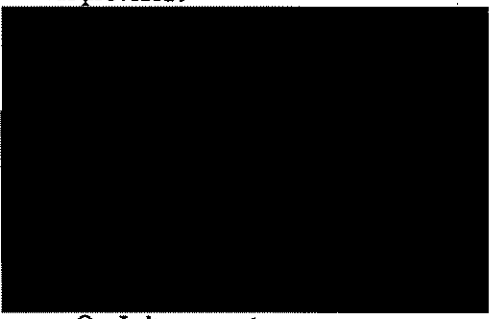
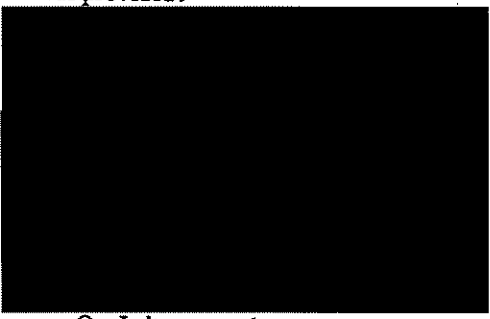
3 (Pages 6 to 9)

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<p style="text-align: right;">Page 10</p> <p>1 MS. HOLTHAM: Objection, the instructions and 2 interaction between Mr. Kennet and counsel are 3 privileged. 4 MR. RIGLER: I agree with that, I just asked 5 if he was asked to search for any documents. 6 A I was asked to search for some documents, 7 yes. 8 Q I would like to have the reporter mark as 9 Drytec exhibit 1 a cover letter of December 27, 2006, 10 from Mr. Langer at Morgan Lewis, and it is followed by 11 documents with the series of numbers which we refer to 12 in America as Bates numbers, and this goes with a series 13 commencing 1 through 35. 14 (Exhibit Drytec 1 marked for identification) 15 Q Were those the documents which you 16 located in response to the search request? 17 A No, I have not located those documents. 18 Q You have not seen these documents 19 previously? 20 A I have seen the documents -- sorry, let 21 me correct that. The last of the documents I located 22 and submitted, which is this, from D 11 onwards. The</p>	<p style="text-align: right;">Page 12</p> <p>1 [REDACTED] 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 [REDACTED] 6 [REDACTED] 7 [REDACTED] 8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 [REDACTED] 17 [REDACTED] 18 [REDACTED] 19 [REDACTED] 20 [REDACTED] 21 [REDACTED] 22 [REDACTED]</p>
<p style="text-align: right;">Page 11</p> <p>1 remainder were obtained elsewhere, I had no involvement 2 in those. 3 Q Tell me what the document beginning at 4 page D 11 and continuing through D 35 is, please. 5 [REDACTED] 6 [REDACTED] 7 [REDACTED] 8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 Q Grand Haven is merely a manufacturing 14 location of SPI Pharma Inc., correct? 15 A It is a manufacturing location. 16 Q But it is not the exclusive location in 17 the United States of SPI Pharma? 18 A I believe not. 19 [REDACTED] 20 [REDACTED] 21 [REDACTED] 22 [REDACTED]</p>	<p style="text-align: right;">Page 13</p> <p>1 [REDACTED] 2 [REDACTED] 3 [REDACTED] 4 Q What is the business of Drytec Limited? 5 A Drytec Limited designs, supplies, 6 installs and commissions drying equipment. 7 Q Did I understand correctly that your only 8 employment is as the managing director of Drytec 9 Limited? 10 A It's not only Drytec Limited, no. 11 Q What other companies? 12 A Drytec Contract Processing Limited and 13 Drytec Holdings Limited. 14 Q And what are the activities of each of 15 those companies? 16 A Drytec Holdings Limited is purely an 17 administrative holding company for Drytec Limited and 18 Drytec Contract Processing. Drytec Contract Processing 19 Limited spray dries -- toll spray dries various 20 materials for clients. 21 Q Do those materials include Mannitol? 22 MS. HOLTHAM: Objection, again, the scope of</p>

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<p style="text-align: right;">Page 14</p> <p>1 the deposition is limited to the matters stated in Mr. 2 Kennet's statement. 3 MR. RIGLER: I'm sorry? 4 MS. HOLTHAM: The scope of the deposition is 5 limited to the matters in Mr. Kennet's statements. 6 MR. RIGLER: Are you instructing him not to 7 answer? 8 MS. HOLTHAM: No. You may answer. 9 Q Could you read the question back, please? 10 (Read back) 11 A The materials do not currently 12 include Mannitol. 13 Q What about Mannogem EZ? 14 A They do not currently include 15 Mannogem EZ. 16 Q And we're speaking of Drytec 17 Contract only? 18 A We are. 19 Q With the recent name change of 20 Drytec Limited, was there any amalgamation with 21 any other company? 22 A No, no other change except the name</p>	<p style="text-align: right;">Page 16</p> <p>1 it was provided? 2  3  4  5  6  7  8  9  10  11 Q Is it correct that you are 12 a managing director and the director of sales for 13 Drytec Limited? 14 A I am managing director responsible 15 for all commercial and fiscal matters of Drytec 16 Limited. 17 Q Is it correct that you are the 18 managing director and director of sales for Drytec 19 Contract Processing Limited? 20 A I am managing director of Drytec 21 Contract Processing Limited. 22 Q Is it correct that you are managing</p>
<p style="text-align: right;">Page 15</p> <p>1 change. 2 Q How did you come, how did Drytec 3 Limited come to have the document beginning at 4 D 11 through D 35 in its files? 5 A We were sent it, I understand, from 6 our American colleagues. 7 Q For what purpose? 8 A The purpose for information to have 9 on file, that's all. 10 Q Why would the American company send 11 you that information? 12 MS. HOLTHAM: Objection, the question is 13 plainly not within Mr. Kennet's own knowledge. 14 MR. RIGLER: It's a document that was 15 submitted by Drytec, I'm certainly entitled him to 16 question him about a document which he produced in 17 respond to the dispute with respect to the 18 jurisdiction. 19 MS. HOLTHAM: The question invites 20 speculation as to why the American company 21 provided it. 22 Q What is your understanding of why</p>	<p style="text-align: right;">Page 17</p> <p>1 director of Drytec Holdings Limited? 2 A I am. 3 Q Have either Drytec Holdings Limited 4 or Drytec Contract Processing Limited had any 5 change in name or affiliation in the past year? 6 A That is correct, they have not had 7 any change in name. 8 Q Who is the parent of Drytec 9 Holdings Limited? 10 A Anhydro Holdings A.S. in Denmark. 11 Q Is that a recent name change? 12 A No, it's not. I don't think so. 13 Q Who is Dedert Europe Holding B.V.? 14 A Dedert was the previous owner, from 15 2001 to 2004, as I understand it. I'm not privy 16 to the legal aspect of the corporate structure. 17 Q Was that a name change in 2004 from 18 Dedert to Anhydro, or was it the sale of 19 a business? 20 A No, the name change from Dedert to 21 Anhydro occurred on 1 January this year, at the 22 same time as Drytec Limited changed its name to</p>

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<p style="text-align: right;">Page 18</p> <p>1 Anhydro U.K. Limited, as part of Anhydro's efforts 2 to unify the world market or world representation. 3 Q So there has been no actual sale of 4 any of these companies or their assets? 5 MS. HOLTHAM: Objection, this is way 6 beyond the scope of the jurisdiction, I'm 7 instructing you not to answer. 8 MR. RIGLER: I am going to ask you to 9 reconsider, because this kind of thing I'll take 10 to the court. You're going to be able to make 11 your instructions today, and the witness, I'm 12 sure, will follow your instructions, but 13 ultimately the issue is going to be decided before 14 the judge in the United States, and I'm trying to 15 confine my questions to what I consider to be 16 relevant, and I think the court is going to agree 17 with me. Now do you wish to maintain your 18 instruction? 19 MS. HOLTHAM: In relation to specific 20 questions that are focused on the corporate 21 identities, you may answer. 22 A Could you repeat the question? (Read</p>	<p style="text-align: right;">Page 20</p> <p>1 whose name I can't remember, but the CEO I do. 2 I only know his nickname. 3 Q Which is? 4 A His nickname is Ziggy somebody or 5 other, bizarre as it may seem, but the CEO is 6 Allan Jorgensen, who is chairman of the Drytec 7 board as well. 8 Q What is the role of Mr. Dedert? 9 A I don't know what the role of 10 Mr. Dedert is, he's a shareholder of Anhydro 11 Holdings. More than that, I don't know. 12 Q Does Drytec Limited have any drying 13 facilities? 14 A No. 15 Q Does it hold itself out as willing 16 to do drying projects in support of either sales 17 or to accommodate its clients on a short-term 18 basis? 19 A It does have the ability to 20 undertake small scale drying trials, and in that 21 respect, we have a number of test facilities only, 22 so I correct my previous statement.</p>
<p style="text-align: right;">Page 19</p> <p>1 back) 2 A The sale of any of the companies 3 that we have been discussing or naming, no, that 4 is correct, there been no sales of those 5 companies. 6 Q And is it correct that the ultimate 7 parent corporation is named Dedert Corporation, 8 and that is an entity formed under the laws of the 9 State of Illinois in the United States? 10 A I believe the ultimate owning 11 company is Anhydro Holding A.S. in Denmark, but 12 I'm not privy to the legal structure, that's as 13 I understand it, Anhydro Holdings A.S. owns 14 100 percent of all Anhydro companies, which 15 includes Dedert, now Anhydro Inc., it includes 16 Drytec Limited, which is now Anhydro U.K. Limited 17 as well as other companies. 18 Q Do you know who the ultimate 19 managing director of the group of companies is, at 20 highest holding company level? 21 A Yes, I know both the CEO and the 22 chairman of the board; the chairman of the board,</p>	<p style="text-align: right;">Page 21</p> <p>1 Q And that would include the ability 2 to dry Mannitol products, would it not? 3 A Depending on your definition of it, 4 Drytec Limited has the ability to design spray 5 dryers for the production of Mannitol, yes, or to 6 test the drying of Mannitol. 7 Q So physically, it dries Mannitol? 8 A Drytec Limited does not dry 9 Mannitol, no. 10 Q And that ability would also apply 11 to Mannogem EZ, would it not? 12 A It would. 13 Q What is the relationship between 14 Drytec Limited and SPI Pharma Incorporated? 15 A There's no direct association or 16 relationship. 17 Q What is the indirect association? 18 A We have supplied through Drytec 19 North America L.L.C. key parts for spray drying 20 for -- spray drying system for Mannitol, or 21 Mannogem, whatever it's called. 22 Q Drytec Contract Processing dries</p>

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<p style="text-align: right;">Page 22</p> <p>1 both Mannitol and Mannogem EZ, correct?</p> <p>2 A It doesn't currently dry either of</p> <p>3 those products, but has in the past.</p> <p>4 Q In the recent past?</p> <p>5 A It depends on your definition of</p> <p>6 recent.</p> <p>7 Q Give me a timeframe, please.</p> <p>8 A In the past, it has, in the recent</p> <p>9 past it has.</p> <p>10 Q Do you know if there are any</p> <p>11 customers in the United States for either of those</p> <p>12 products?</p> <p>13 A Do I know if there are customers in</p> <p>14 the United States?</p> <p>15 Q Yes, you are the managing director</p> <p>16 of the company, right?</p> <p>17 A I am indeed the managing director</p> <p>18 of the company, we have established that.</p> <p>19 I believe there are customers in the United States</p> <p>20 for those products.</p> <p>21 Q And the products are dried here in</p> <p>22 the U.K. and then imported by the customer or</p>	<p style="text-align: right;">Page 24</p> <p>1 Imports, they have been marked confidential</p> <p>2 because although the information is public, it's</p> <p>3 an import record, the company that accumulates the</p> <p>4 information has proprietary interest in the</p> <p>5 report. I'm certainly free to give it to you, but</p> <p>6 I do remind you that they --</p> <p>7 A It's under confidentiality.</p> <p>8 MS. HOLTHAM: I'd like to make</p> <p>9 an objection certainly for the record at least,</p> <p>10 I'm not going to instruct Mr. Kennet not to look</p> <p>11 at these documents, but in the confidentiality</p> <p>12 agreement pursuant to which disclosure of these</p> <p>13 documents was made, you specifically agreed that</p> <p>14 the documents were not to be disclosed if marked</p> <p>15 confidential, as they had been by you, to Drytec's</p> <p>16 personnel.</p> <p>17 That agreement was on letter from Morgan</p> <p>18 Lewis dated December 21st 2006, and specifically</p> <p>19 provides:</p> <p>20 "Outside counsel for Roquette and Drytec</p> <p>21 agree to hold the confidential information in the</p> <p>22 strictest confidence and not disclose it or</p>
<p style="text-align: right;">Page 23</p> <p>1 exported by Drytec to the United States, correct?</p> <p>2 MS. HOLTHAM: Objection, question vague</p> <p>3 and compound.</p> <p>4 Q Do you need it broken down? I'm</p> <p>5 happy to do it in parts, but I thought it was</p> <p>6 fairly straightforward.</p> <p>7 A Drytec Contract Processing has in</p> <p>8 the past manufactured Mannitol based products</p> <p>9 under strict instructions of clients, clients</p> <p>10 prescribing every aspect of the process.</p> <p>11 Q And those products have been</p> <p>12 shipped to the United States?</p> <p>13 A I believe Drytec haven't shipped</p> <p>14 any products, but I understand products have been</p> <p>15 ultimately despatched by someone to the</p> <p>16 United States.</p> <p>17 Q By whom?</p> <p>18 A Normally by our clients, Drytec</p> <p>19 doesn't normally get involved in shipping of</p> <p>20 products.</p> <p>21 Q Let's mark as Drytec exhibit 2 four</p> <p>22 pages which are from a compilation by Piers</p>	<p style="text-align: right;">Page 25</p> <p>1 otherwise permit it to become available to any</p> <p>2 person, including but not limited to Roquette and</p> <p>3 Drytec personnel."</p> <p>4 MR. RIGLER: Yes, and now I was the</p> <p>5 producing party, or Roquette, the plaintiff, was</p> <p>6 the producing party, and it is willing to waive</p> <p>7 that confidentiality. The only reason it was</p> <p>8 marked confidential is because of the proprietary</p> <p>9 interest in the accumulation. This is not even</p> <p>10 a full accumulation, and I believe that this is</p> <p>11 within the legitimate scope of the information,</p> <p>12 and since my client is the one who produced,</p> <p>13 I believe that I can waive that confidentiality.</p> <p>14 (Exhibit Drytec 2 marked for identification)</p> <p>15 MS. HOLTHAM: Would you give Mr. Kennet</p> <p>16 a moment to look through the document?</p> <p>17 MR. RIGLER: Sure. (Pause).</p> <p>18 Q Have you seen Drytec exhibit 2</p> <p>19 previously?</p> <p>20 A No, I have not.</p> <p>21 Q I see it has no Bates numbers. May</p> <p>22 I have it, please?</p>

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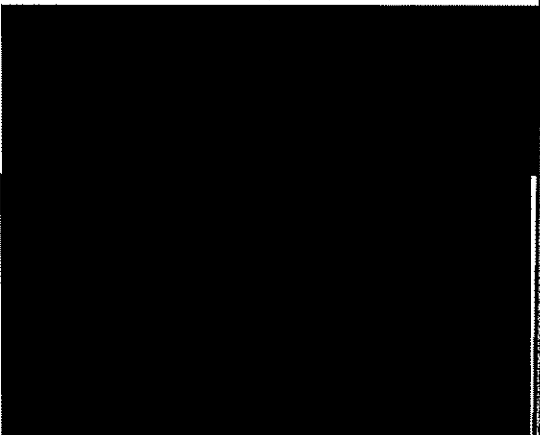
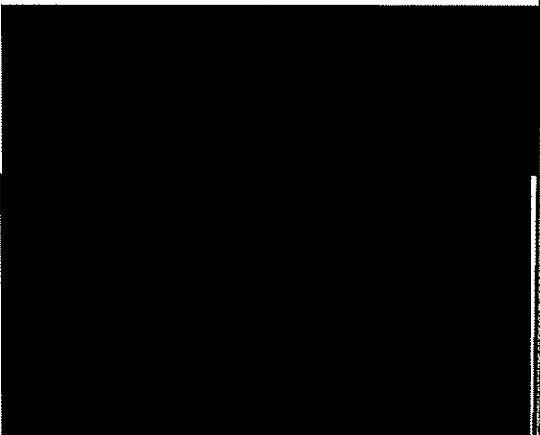
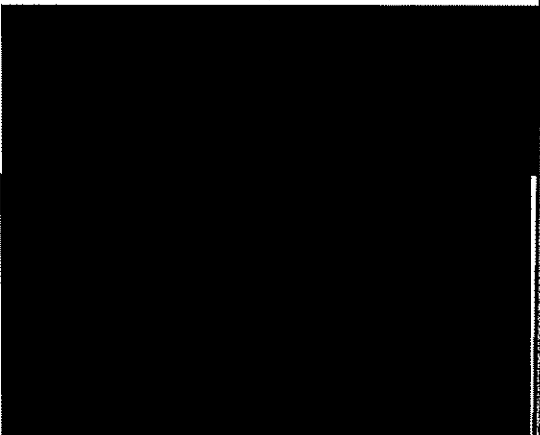
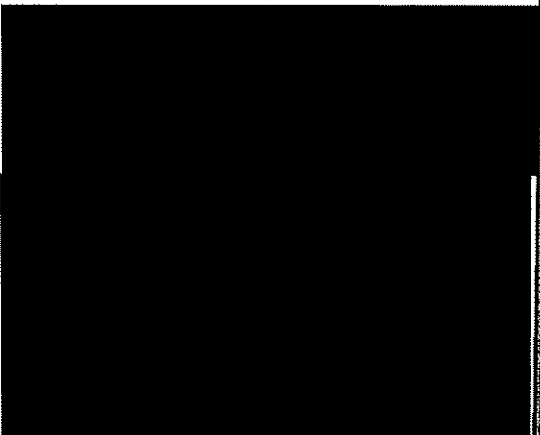
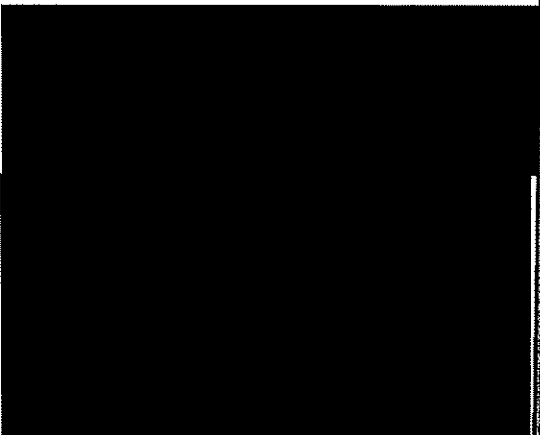
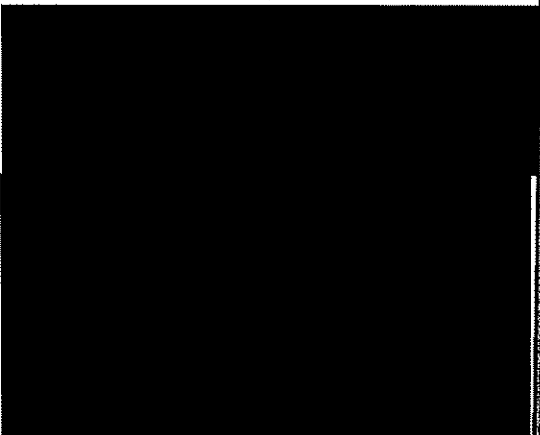
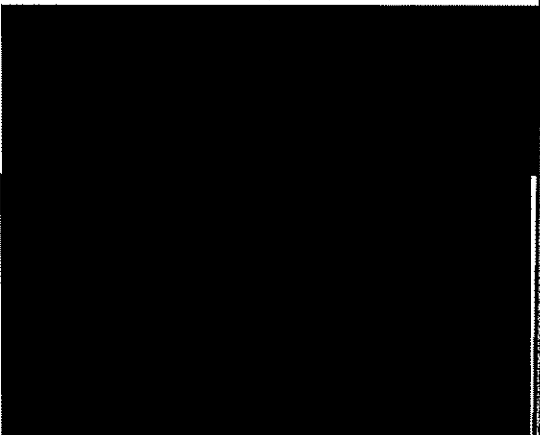
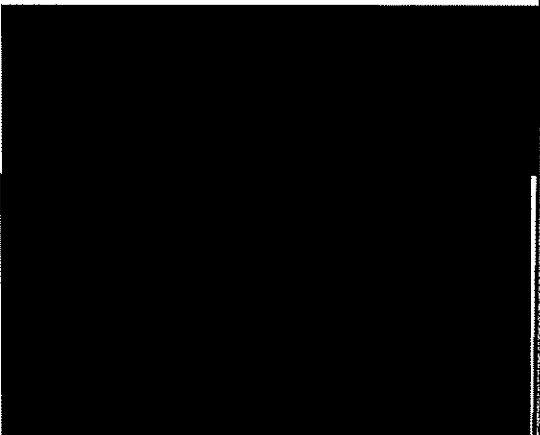
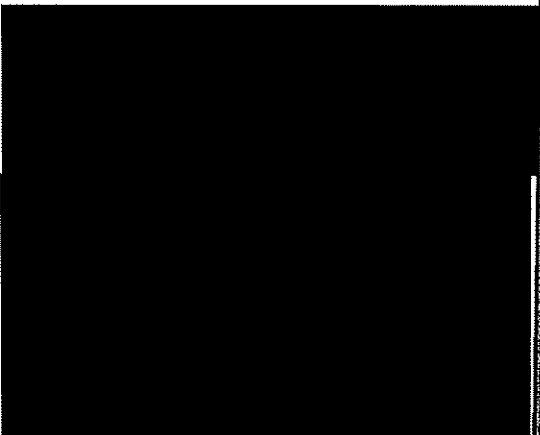
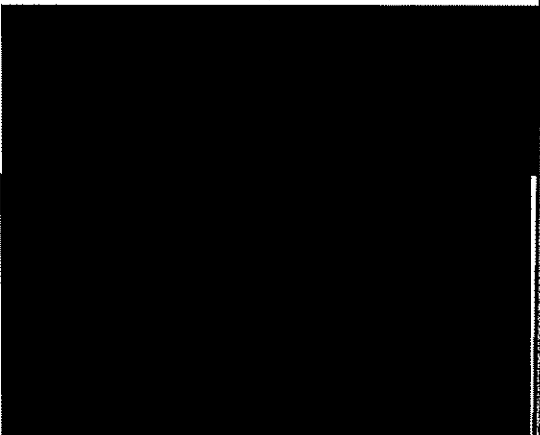
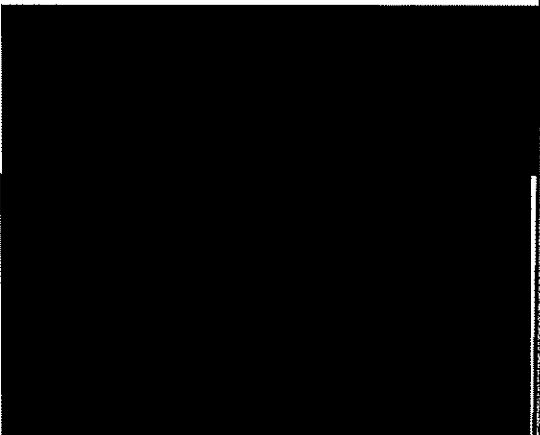
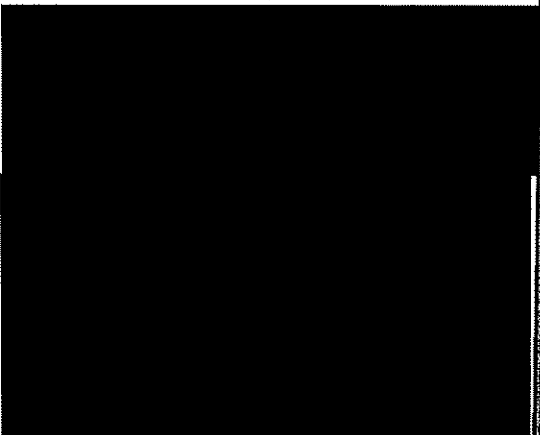
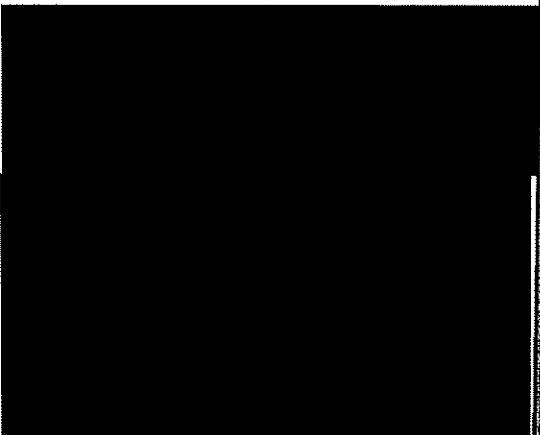
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<p style="text-align: right;">Page 26</p> <p>1 A Sure. (Handed).</p> <p>2 Q I'm going to mark page 1, page 2,</p> <p>3 page 3, page 4, page 5. Maybe I'll ask your</p> <p>4 counsel to initial that as marked, so when that</p> <p>5 becomes part of the record, we'll know that's the</p> <p>6 correct document and correct page.</p> <p>7 MS. HOLTHAM: Thank you.</p> <p>8 Q Could you turn to page 2 of Drytec</p> <p>9 exhibit 2?</p> <p>10 A Yes.</p> <p>11 Q Does this refresh your recollection</p> <p>12 as to whether Drytec has ever imported any</p> <p>13 Mannitol powder into the United States?</p> <p>14 A It seems from this documentation</p> <p>15 that Drytec Contract Processing has imported --</p> <p>16 exported material to the United States, Mannitol</p> <p>17 material.</p> <p>18 Q And why do you say Drytec Contract</p> <p>19 Processing?</p> <p>20 A Because Drytec Contract Processing</p> <p>21 is the only company with any Mannitol association,</p> <p>22 with any client in the United States that produces</p>	<p style="text-align: right;">Page 28</p> <p>1 previously?</p> <p>2 A I have not, no.</p> <p>3 Q This indicates that 35,540 pounds</p> <p>4 of Mannitol in 300 drums were shipped -- were</p> <p>5 exported by Drytec Limited to SPI Pharma, correct?</p> <p>6 A So this document seems to indicate,</p> <p>7 yes.</p> <p>8 Q And then if we turn to page 5, we</p> <p>9 see that 298 kegs weighing 35,301 pounds of</p> <p>10 Mannitol powder were exported by Drytec Contract</p> <p>11 Processing, again to SPI Pharma, correct?</p> <p>12 A Yes, so it seems.</p> <p>13 Q Do you have any reason to believe</p> <p>14 that Piers Imports, the compilation service, would</p> <p>15 have misread the shipping documents?</p> <p>16 A I don't have any reason -- I have</p> <p>17 no knowledge whether the system could result in</p> <p>18 errors. However, it significantly surprises me</p> <p>19 that Drytec Limited is listed there, because</p> <p>20 Drytec Limited did not have any contractual</p> <p>21 relationship with SPI Pharma, and they do not</p> <p>22 normally from the U.K. export anything since they</p>
<p style="text-align: right;">Page 27</p> <p>1 Mannitol.</p> <p>2 Q But Drytec Limited does have the</p> <p>3 test facility where it is able to dry Mannitol</p> <p>4 powder?</p> <p>5 A Yes, to my knowledge, Mannitol</p> <p>6 powder has never been produced on the test unit.</p> <p>7 Q But we do agree, I think, the</p> <p>8 document speaks for itself, that the exporter is</p> <p>9 described as Drytec?</p> <p>10 A It is described in this document as</p> <p>11 Drytec.</p> <p>12 Q Without distinction as between</p> <p>13 Drytec Contract Processing and Drytec Limited?</p> <p>14 A It would be Drytec Contract</p> <p>15 Processing Limited as the legal name of the</p> <p>16 company who has undertaken that exporting,</p> <p>17 although this document doesn't identify that,</p> <p>18 you're correct.</p> <p>19 Q Let's turn to what I think is going</p> <p>20 to be page 4.</p> <p>21 A Yes.</p> <p>22 Q You've not seen this document</p>	<p style="text-align: right;">Page 29</p> <p>1 don't produce anything. But the documentation</p> <p>2 seems to contradict this, so it comes as</p> <p>3 a surprise to me.</p> <p>4 Q SPI Pharma certainly believes that</p> <p>5 it is purchasing Mannogem EZ spray dry Mannitol</p> <p>6 from Drytec Limited, does it not?</p> <p>7 MS. HOLTHAM: Objection, the question</p> <p>8 invites speculation on behalf of the witness.</p> <p>9 Q You may answer.</p> <p>10 A I do not believe that Drytec</p> <p>11 Limited, whose activities is purely the design and</p> <p>12 supply of spray drying equipment, had any Mannitol</p> <p>13 production contract or obligation, whatever you</p> <p>14 want to call it, with SPI Pharma. It is Drytec</p> <p>15 Contract Processing Limited which is the toll</p> <p>16 manufacturing facility that Drytec has, or company</p> <p>17 that Drytec has.</p> <p>18 Q And those are sister companies both</p> <p>19 owned by Drytec Holdings, and you're the chief</p> <p>20 executive officer of all three, or the managing</p> <p>21 director of all three?</p> <p>22 A I am managing director of all</p>


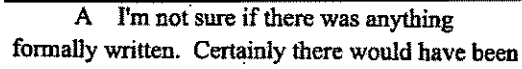
8 (Pages 26 to 29)

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<p style="text-align: right;">Page 30</p> <p>1 three, yes.</p> <p>2 Q But my question to you was whether</p> <p>3 SPI Pharma regarded Drytec Limited as its supplier</p> <p>4 of Mannogem EZ spray dry Mannitol.</p> <p>5 A I can't possibly answer for</p> <p>6 SPI Pharma, but my understanding is they wouldn't</p> <p>7 have had that expectation or impression.</p> <p>8 Q If I turn -- is that your</p> <p>9 declaration in front of you?</p> <p>10 A Yes.</p> <p>11 Q Can you turn to number 14, please?</p> <p>12 A Yes.</p> <p>13 Q In paragraph 14, you state that:</p> <p>14 "Drytec derives no revenue from any</p> <p>15 clients, consumers, customers or any other</p> <p>16 business in Delaware."</p> <p>17 Isn't it correct that Drytec Limited</p> <p>18 has derived revenue from SPI Pharma Inc. in</p> <p>19 Delaware?</p> <p>20 A I do not believe that Drytec</p> <p>21 Limited has. I do not believe any invoicing has</p> <p>22 been issued by Drytec Limited to SPI Pharma</p>	<p style="text-align: right;">Page 32</p> <p>1 Mannitol.</p> <p>2 </p> <p>3 </p> <p>4 </p> <p>5 </p> <p>6 </p> <p>7 </p> <p>8 </p> <p>9 </p> <p>10 </p> <p>11 </p> <p>12 </p> <p>13 </p> <p>14 </p> <p>15 Q Well, I think our answers are</p> <p>16 passing somewhat --</p> <p>17 A Our understanding was that it was</p> <p>18 for SPI Pharma, yes.</p> <p>19 Q Thank you, and Drytec Limited did</p> <p>20 record the income?</p> <p>21 A It did record the income, yes.</p> <p>22 Q And turning to number 16 in your</p>
<p style="text-align: right;">Page 31</p> <p>1 directly, since they did not manufacture anything</p> <p>2 for SPI, any material.</p> <p>3 Q Would you turn to number 15,</p> <p>4 please? That says:</p> <p>5 "Drytec has never contracted to do any</p> <p>6 business related to Mannitol products with</p> <p>7 SPI Pharma Inc."</p> <p>8 That statement either is incorrect or</p> <p>9 requires a qualification, is that correct?</p> <p>10 A It is still my understanding that</p> <p>11 Drytec Limited has never contracted.</p> <p>12 Q So you're saying that there is no</p> <p>13 piece of paper exchanged directly between Drytec</p> <p>14 Limited and SPI Pharma Incorporated?</p> <p>15 A That is my understanding.</p> <p>16 Q Not that they have not done</p> <p>17 business?</p> <p>18 A Well, as a contracted business,</p> <p>19 there needs to be a piece of paper, presumably.</p> <p>20 There needs to be a formal contract to do business</p> <p>21 and I do not believe there is any formal contract</p> <p>22 between SPI Pharma and Drytec Limited to produce</p>	<p style="text-align: right;">Page 33</p> <p>1 declaration:</p> <p>2 "Drytec has never made, used, offered</p> <p>3 to sell or sold any Mannitol product in the</p> <p>4 United States, nor has it imported any Mannitol</p> <p>5 product into the United States."</p> <p>6 At the time you said that, I take it</p> <p>7 you were unaware of the Piers report, and page 4</p> <p>8 I believe it is, showing Drytec Limited as the</p> <p>9 exporter?</p> <p>10 A I was unaware of that document, but</p> <p>11 I still stand by that statement. Drytec has never</p> <p>12 sold any Mannitol product in the United States,</p> <p>13 which we have not, nor has it imported any</p> <p>14 Mannitol product into the United States. Drytec</p> <p>15 has exported allegedly, by the documentation,</p> <p>16 material into the United States.</p> <p>17 Q Have you ever met personally with</p> <p>18 anyone at SPI Pharma Inc.?</p> <p>19 A I have met.</p> <p>20 Q How many times?</p> <p>21 A No more than two or three</p> <p>22 occasions.</p>

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<p style="text-align: right;">Page 34</p> <p>1 Q With whom did you meet?</p> <p>2 A I believe I met with Colleen</p> <p>3 Blackney and with Todd Lumbert. It was some time</p> <p>4 ago, so my memory is very hazy, I'm afraid.</p> <p>5 I meet an awful lot of people.</p> <p>6 Q Tell me what you mean by some time</p> <p>7 ago.</p> <p>8 A We stopped all production of</p> <p>9 Mannitol products back in September/October 2005,</p> <p>10 so there certainly has been no meeting since well</p> <p>11 before that time; probably almost two years ago,</p> <p>12 I would have thought, would be the last time I met</p> <p>13 them.</p> <p>14 Q This may go beyond your</p> <p>15 restriction, and here I would defer to any</p> <p>16 instruction your counsel may choose to give, or</p> <p>17 may not choose to give, but why did Drytec stop</p> <p>18 production of Mannitol in September of 2005?</p> <p>19 MS. HOLTHAM: I will object, it is</p> <p>20 beyond the scope of the deposition, I instruct you</p> <p>21 not to answer.</p> <p>22 Q I think it may be within, but</p>	<p style="text-align: right;">Page 36</p> <p>1 locations of the various meetings with</p> <p>2 Ms. Blackney?</p> <p>3 A They would have happened at Drytec</p> <p>4 CP's -- Drytec's offices. I've never met</p> <p>5 anybody -- I've never been to SPI Pharma, I've</p> <p>6 never been to the States and met anybody there,</p> <p>7 they would have all occurred at Drytec's offices</p> <p>8 in Tonbridge.</p> <p>9 Q So Ms. Blackney and Mr. Lambert</p> <p>10 both came to --</p> <p>11 A Correct.</p> <p>12 Q -- Tonbridge?</p> <p>13 A Correct.</p> <p>14 Q All right, thank you very much.</p> <p>15 MR. RIGLER: Do you have questions for</p> <p>16 Mr. Kennet?</p> <p>17 MS. HOLTHAM: No, I simply want to</p> <p>18 reserve the right of the witness to read through</p> <p>19 the transcript.</p> <p>20 MR. RIGLER: He certainly does. I have</p> <p>21 asked for a five day turnaround on the transcript.</p> <p>22 Under the American procedural rules, you should</p>
<p style="text-align: right;">Page 35</p> <p>1 I wouldn't quarrel with the instruction. Why</p> <p>2 don't you give me a minute? I think we're very</p> <p>3 close to finishing.</p> <p>4 (Short break at 12.54 pm until 12.57 pm)</p> <p>5 Q Was there any kind of a contract</p> <p>6 between Drytec Limited and Drytec North America</p> <p>7 </p> <p>8 </p> <p>9 A I'm not sure if there was anything</p> <p>10 formally written. Certainly there would have been</p> <p>11 an understanding.</p> <p>12 Q Does that change your answer of</p> <p>13 a few minutes ago that there's no understanding</p> <p>14 until it's in writing?</p> <p>15 A Sorry, no understanding?</p> <p>16 Q Until it is in writing.</p> <p>17 A I don't know what there is.</p> <p>18 Certainly there was an agreement of a standard</p> <p>19 markup, but whether that extended -- you know, is</p> <p>20 an intercompany agreement the same as a contract?</p> <p>21 I don't know.</p> <p>22 Q Where did the -- what were the</p>	<p style="text-align: right;">Page 37</p> <p>1 have 30 days in which to review it and make any</p> <p>2 corrections. However, I'm going to ask if you</p> <p>3 will accelerate that process, because your</p> <p>4 attorneys have stipulated with us that we will be</p> <p>5 briefing the issue, your side has already</p> <p>6 submitted a motion saying there's no jurisdiction,</p> <p>7 but our opposition will be due on an accelerated</p> <p>8 basis, so if you could get back to me with any</p> <p>9 corrections within a week or 10 days.</p> <p>10 A 10 days, yes.</p> <p>11 MS. HOLTHAM: Just to confirm as well</p> <p>12 that the record will be provided in transcript</p> <p>13 manuscript and disk copies, is that correct?</p> <p>14 Good.</p> <p>15 MR. RIGLER: And under the American</p> <p>16 rules, you are required to sign the transcript</p> <p>17 under oath, frequently that is waived, and I am</p> <p>18 perfectly happy to waive it.</p> <p>19 A Thank you, that makes it a lot</p> <p>20 easier for us.</p> <p>21 MR. RIGLER: I think I will reconsider</p> <p>22 and I will ask that a copy of your declaration be</p>

10 (Pages 34 to 37)

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<p style="text-align: right;">Page 38</p> <p>1 included as an exhibit, so that would be Drytec</p> <p>2 exhibit 3.</p> <p>3 (Exhibit Drytec 3 marked for identification)</p> <p>4 Q Thank you, Mr. Kennet.</p> <p>5 (The deposition concluded at 1.02 pm)</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">Page 40</p> <p>1 MS. RUTH HOLTHAM</p> <p>2 SERLE COURT</p> <p>3 6 New Square</p> <p>4 Lincoln's Inn</p> <p>5 London WC2A 3QS</p> <p>6 IN RE: FRERES v. SPI PHARMA, INC., and DRYTEC LTD</p> <p>7 Dear Ms. Holtham,</p> <p>8 Enclosed please find your copy of the deposition</p> <p>9 OF PAUL KENNET, along with the original signature page.</p> <p>10 As agreed, you will be responsible for contacting the</p> <p>11 witness regarding signature.</p> <p>12 Within 30 days of receipt, please forward errata</p> <p>13 sheet and original signed signature page to counsel</p> <p>14 For Plaintiff.</p> <p>15 If you have any questions, please do not hesitate</p> <p>16 to call. Thank you.</p> <p>17 Yours,</p> <p>18</p> <p>19</p> <p>20 Reporter/Notary</p> <p>21 Cc: MR. DOUGLAS V. RIGLER, ESQ.</p> <p>22</p>
<p style="text-align: right;">Page 39</p> <p>1 ACKNOWLEDGEMENT OF DEPONENT</p> <p>2</p> <p>3</p> <p>4 I, (PAUL KENNET), do hereby acknowledge I have read</p> <p>5 And examined the foregoing pages of testimony, and</p> <p>6 examined the same is a true, correct and complete</p> <p>7 Transcription of the testimony give by me, and any</p> <p>8 Changes or corrections, if any, appear in the attached</p> <p>9 Errata sheet signed by me.</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17 Date PAUL KENNET</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">Page 41</p> <p>1 Capital Reporting Company</p> <p>2 1000 Connecticut Avenue, Northwest</p> <p>3 Suite 505</p> <p>4 Washington, D.C. 20006</p> <p>5 (202) 857-3376</p> <p>6 ERRATA SHEET</p> <p>7 Case Name: FRERES v. SPI PHARMA, INC., and DRYTEC LTD</p> <p>8 Witness Name: PAUL KENNET</p> <p>9 Deposition Date: January 16, 2007</p> <p>10 Page No. Line No. Change</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20 Signature Date</p> <p>21</p> <p>22</p>

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<p>Page 42</p> <p>1 CERTIFICATE OF COURT REPORTER</p> <p>2 I, Claire G. Hill, LiveNote Accredited</p> <p>3 Reporter of London, England, hereby certify that the</p> <p>4 foregoing testimony was recorded by me stenographically</p> <p>5 and thereafter transcribed by me; and that the foregoing</p> <p>6 transcript is a true and accurate verbatim record of the</p> <p>7 said testimony.</p> <p>8 I further certify that I am not a relative,</p> <p>9 employee or counsel of any of the parties of the within</p> <p>10 cause, nor am I an employee or relative of any counsel</p> <p>11 for the parties, nor am I in any way interested in the</p> <p>12 outcome of the within cause.</p> <p>13</p> <p>14</p> <p>15</p> <p>16 Claire G. Hill</p> <p>17 Dated Friday 19 January 2007</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	

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1 CERTIFICATE OF COURT REPORTER

2 I, Claire G. Hill, LiveNote Accredited

3 Reporter of London, England, hereby certify that the
4 foregoing testimony was recorded by me stenographically
5 and thereafter transcribed by me; and that the foregoing
6 transcript is a true and accurate verbatim record of the
7 said testimony.

8 I further certify that I am not a relative,
9 employee or counsel of any of the parties of the within
10 cause, nor am I an employee or relative of any counsel
11 for the parties, nor am I in any way interested in the
12 outcome of the within cause.

13

14

15

Claire G. Hill

16

Claire G. Hill

17

Dated Friday 19 January 2007

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<p>A</p> <p>ability 20:19 21:1,4,10 able 9:8 18:10 27:3 accelerate 37:3 accelerated 37:7 accepted 12:3 accommodate 20:17 Accredited 42:2 accumulates 24:3 accumulation 3:12 25:9,10 accurate 42:6 accused 6:15 acknowledge 39:4 action 4:15 5:2 6:4 9:22 activities 13:14 29:11 actual 18:3 additional 9:5 address 4:8 administrative 13:17 affiliation 17:5 afraid 34:4 ago 34:4,7,11 35:13 agree 10:4 18:16 24:21 27:7 agreed 24:13 40:10 agreement 6:15 24:12 24:17 35:18,20 Allan 20:6 allegedly 33:15 amalgamation 14:20 amended 4:15 America 7:20 10:12 12:13,14,22 21:19 32:6,14 35:6 American 11:6 12:9 15:6,10,20 36:22 37:15 Americans 16:3 Anhydro 8:14,15,16,18 8:20 17:10,18,21 18:1 19:11,13,14,15 19:16 20:10 Anhydro's 18:1 answer 5:12,14 6:12 14:7,8 18:7,21 29:9 30:5 32:8 34:21 35:12 answers 32:15</p>	<p>anybody 36:5,6 appear 39:8 apply 21:10 Arlington 2:5 asked 9:4,20 10:4,5,6 16:8 36:21 aspect 17:16 23:10 assembly 12:20 assets 18:4 assistance 9:17 associated 6:14 association 21:15,17 26:21 atomizer 12:20 32:4,10 attached 39:8 attorneys 37:4 available 25:1 Avenue 41:2 aware 6:8 awful 34:5 A.S 17:10 19:11,13</p> <p>B</p> <p>B 3:7 back 14:9,10 19:1 34:9 37:8 background 6:10 7:12 7:12 barrister 5:5 based 23:8 basis 20:18 37:8 Bates 10:12 25:21 beginning 11:3 15:3 behalf 29:8 believe 11:11,18 12:6 12:17,20 19:10 22:19 23:13 25:10,13 28:13 29:10 30:20,21 31:21 33:8 34:2 believes 29:4 beyond 18:6 34:14,20 bid 12:2 bit 5:10 7:11 bizarre 20:5 Blackney 34:3 36:2,9 board 19:22,22 20:7 Bockius 1:9 books 32:3,8 Borozene 7:4 break 35:4</p>	<p>briefing 37:5 briefly 7:22 bring 8:22 9:6 broken 23:4 brought 4:17 9:2 business 13:4 17:19 30:16 31:6,17,18,20 32:5 B.V 17:13</p> <p>C</p> <p>C 2:1 4:1 9:12 39:1 call 29:14 40:16 called 21:21 Cape 7:19 Capital 41:1 card 8:13,13 card's 8:17 Case 41:7 cause 42:10,12 Cc 40:21 CEO 19:21 20:1,5 certainly 8:1 15:15 24:5,9 29:4 34:10 35:10,18 36:20 CERTIFICATE 42:1 certify 42:3,8 chairman 19:22,22 20:6 challenging 5:1 change 14:19,22 15:1 17:5,7,11,17,20 35:12 41:10 changed 8:15 17:22 changes 8:21 39:8 chartered 7:13 chemical 7:14,15 chief 29:19 choose 34:16,17 Civ 1:2 Claire 1:11 42:2,16 client 25:12 26:22 clients 13:20 20:17 23:9,9,18 30:15 close 4:10 35:3 clutter 9:10 colleagues 15:6 Colleen 34:2 come 15:2,3 comes 29:2</p>	<p>commencing 10:13 commercial 5:21,21 16:15 commissions 13:6 companies 8:2 13:11 13:15 18:4 19:2,5,14 19:17,19 29:18 company 6:14,16,18,18 6:19 8:3,18 12:9 13:17 14:21 15:10,20 19:11,20 22:16,18 24:3 26:21 27:16 29:16 41:1 competitive 12:2,2 compilation 23:22 28:14 complaint 4:14,15 complete 39:6 component 16:8 components 12:18,20 compound 23:3 concluded 38:5 confidence 24:22 confidential 24:1,15,21 25:8 confidentiality 6:2,15 24:7,11 25:7,13 confine 18:15 confirm 37:11 confirmation 16:2 Connecticut 41:2 connection 9:21 16:6 32:3,9 consider 18:15 consult 5:6 consumers 30:15 contacting 40:10 continuing 11:4 contract 12:21 13:1,12 13:18,18 14:17 16:19 16:21 17:4 21:22 23:7 26:15,18,20 27:13,14 28:10 29:13 29:15 31:20,21 35:5 35:20 contracted 31:5,11,18 contractual 28:20 contradict 29:2 copies 37:13 copy 37:22 40:8</p>
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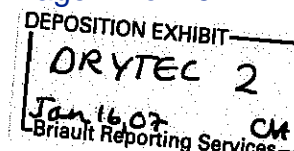
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EXHIBIT 2

**BASE INTERROGEE:**

File 573:Piers Imports(US Ports) 2006/Jun W3

The **PIERS Imports (U.S. Ports)** database offers timely, accurate and complete import information on global cargo entering seaports in the United States. The file contains the most recent 18 months of information. PIERS monitors global shipments of goods and commodities on everything from raw materials to consumer goods. PIERS reporters throughout the country collect import information obtained from vessel manifests and U.S. Customs Automated Manifest Systems (AMS) from all U.S. ports. To ensure accuracy, the PIERS quality-assurance staff audits and cross-checks shipping documentation. Ship lines along with Importers and exporters that subscribe to PIERS verify their own shipments and notify PIERS of any discrepancies among the shipment records. Due to PIERS quality assurance procedures, there is up to a two-month lag between vessel arrivals and the loading of data into the file

STRATEGIE:

S1 239 MANNITOL
 S2 239 MANNITOL?
 S3 0 MANNOGEM
 S4 0 MANNOGEM?
 S5 73 SPI()POLYOLS OR SPI()PHARMA
 S6 73 E38-E39
 S7 62 S2 AND (S6 OR S5)
 S8 7 EX='SPI PHARMA'
 S9 72 IM='SPI PHARMA' OR IM='SPI POLYOLS'
 S10 73 S8 OR S9
 S11 0 S8 AND S2
 S12 62 S9 AND S2
 S13 0 S12 NOT S5
 S14 11 S5 NOT S12

*W2 P.I.
 W2*

CONFIDENTIAL

DIALOG(R)File 573:Piers Imports(US Ports)
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0058791970

Product Imported: *MANNITOL* POWDER

Product Code: 4936810 (MANNITOL)

Weight of Cargo: 30091 POUNDS

Number of Units of Cargo: 335 PIECES(LOGS,EMPTY BEAMS)

Date of Arrival (YY/MM/DD): 060422

Exporter: DRYTEC

Company Location: TONBRIDGE, U KING (412)

U.S.-Based Importer: *SPI PHARMA*

P.2
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Company Location: NEWARK, DE

Point of Origin: TONBRIDGE (41398), U KING (412)

U.S. Port of Discharge: NEW YORK (1001)

ur P.3
[Signature]
CONFIDENTIAL

DIALOG(R)File 573:Piers Imports(US Ports)
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0047478520

Product Imported: *MANNITOL*

Product Code: 4936810 (MANNITOL)

Weight of Cargo: 35540 POUNDS

Number of Units of Cargo: 300 DRUMS, FIBER DRUMS, POLY DR

Date of Arrival (YY/MM/DD): 050208

Exporter: DRYTEC LTD

Company Location: TONBRIDGE, U KING (412)

U.S.-Based Importer: *SPI PHARMA*

Company Location: NA, NA

Point of Origin: TONBRIDGE (41398), U KING (412)

U.S. Port of Discharge: NEW YORK (1001)

m P.4
[Signature]
CONFIDENTIAL

DIALOG(R)File 573:Piers Imports(US Ports)
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0045856485

Product Imported: *MANNITOL* POWDER

Product Code: 4936810 (MANNITOL)

Weight of Cargo: 35301 POUNDS

Number of Units of Cargo: 298 KEGS

Date of Arrival (YY/MM/DD): 041119

Exporter: DRYTEC CONTRACT PROCESSING

Company Location: TONBRIDGE, U KING (412)

U.S.-Based Importer: *SPI PHARMA*

Company Location: GRAND HVN, MI

Point of Origin: TONBRIDGE (41398), U KING (412)

U.S. Port of Discharge: NEW YORK (1001)

un P.S. *[signature]*

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EXHIBIT 3



SPI Pharma, Inc.
321 Cherry Lane
New Castle, DE 19720-2780
USA
302-576-8500

April 2005

RE: Manufacture of Mannogem™ EZ Spray Dried Mannitol

The above product is manufactured exclusively for SPI Pharma Inc. in the U.K. at the following location:

Drytec Ltd.
Morley Road
Tonbridge
Kent, TN9 1RA
England

Quality approval and release for Mannogem EZ is by SPI Pharma's Grand Haven manufacturing site.
Contact is :

Todd Lumbert
Quality Assurance Manager
SPI Pharma Inc.
1711 Tiles Ct.
Grand Haven , MI 49417
302-576-8500 X 6912

For commercial or order information, contact SPI Pharma's customer service team at 302-576-8500.

Sincerely,

Colleen N. Blackney
Marketing Manager

EXHIBIT 4

EXHIBIT 4

FULLY REDACTED

EXHIBIT 5

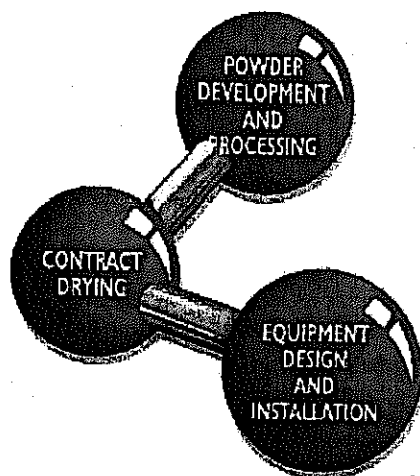
Anhydro Group

You have tried to access the website either for **Drytec Ltd.** or **Simatek**.

Please go to the correct web address which is either www.drytecdryers.com or www.simatek.com

DRYTEC

A member of the Anhydro Group



For over 20 years, Drytec has been a worldwide supplier of particle drying equipment. We offer our customers a range of drying services that is second to none in quality and efficiency. Drytec products include spray dryers, flash dryers, ring dryers, and spray fluid bed dryers.

Our experience has given us the benefit of working with leading companies in the chemical, food manufacturing, and pharmaceutical industries in more than 20 different countries. Our customers exacting demands for quality processing of top quality materials has driven our search for better answers to drying and encapsulation requirements.

At Drytec we aim to be more than just an equipment supplier. We hope to be helpful business partners to our customers. We always try to work as an extension of your team, to find the new and better drying solutions that will help your business maximise its potential.



PILOT SCALE DRYERS



SPRAY DRYERS



FLASH DRYERS



RING DRYERS



SPRAY FLUID BED DRYERS



CONTROL SYSTEMS



PILOT PLANT FACILITIES



CONTRACT DRYING

Contact DRYTEC

Drytec (North America)
20000 Governors Drive • Olympia Fields,
IL60461

Contact: John Betts

(1) 708 747 7846 • Fax: (1) 708 755 8815
E-mail: drytec@dedert.com

UK Office: Drytec Ltd. • 46 Morley Rd.
Tonbridge, Kent, TN9 1RA • England

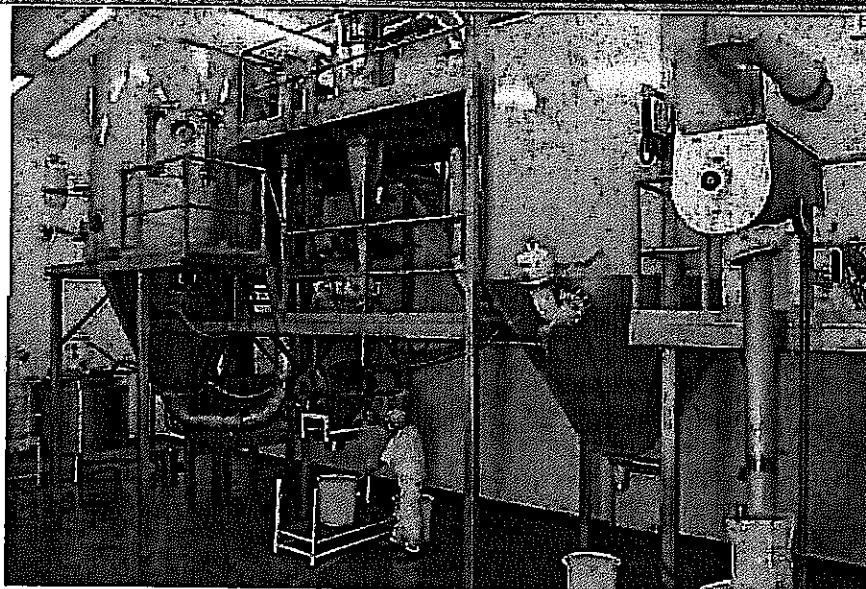
Contact: Paul Kennet

(44) 1732 362611 • Fax: (44) 1732 770776
E-mail: sales@drytecltd.com

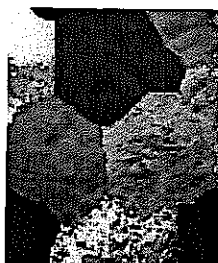
DRYTEC

A member of the Anhydro Group

CONTRACT DRYING



Food Grade Dryer at Drytec's contract drying facility.

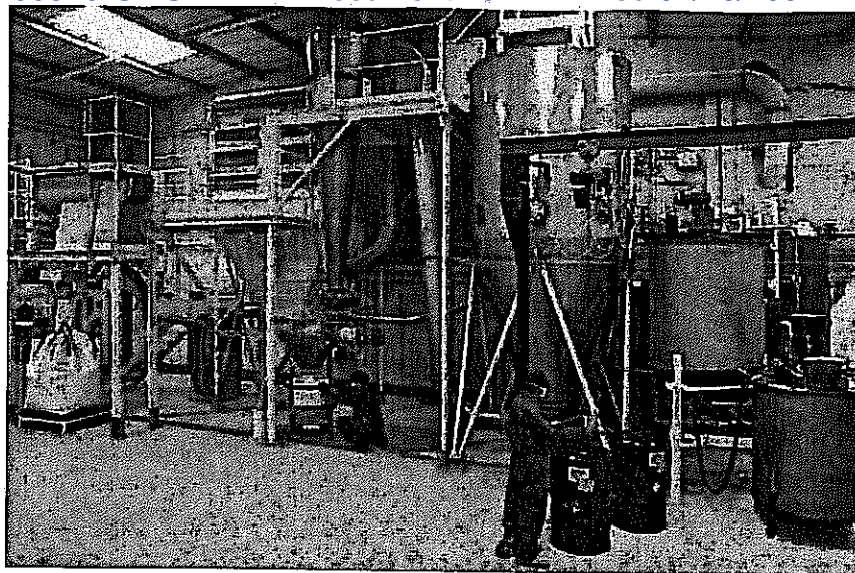


The Drytec Contract Drying operation is one that is in constant demand from the company's many customers who do not wish to invest unnecessarily in expensive capital equipment.

Products can be dried for test marketing or to satisfy the demands of a client who is waiting for a new dryer to be installed.

Drytec can offer manufacturers a level of cleanliness that is second to none, exceeding ISO9002 requirements and with HACCP analysis as an integral part of our quality control systems.

This facility enables Drytec to provide a complete drying service.



Chemical processing plant at Drytec's contract drying facility.



● PILOT SCALE
DRYERS

● SPRAY FLUID BED
DRYERS

● SPRAY
DRYERS

● CONTROL
SYSTEMS

● FLASH
DRYERS

● PILOT PLANT
FACILITIES

● RING DRYERS

● CONTRACT
DRYING

Contact DRYTEC

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EXHIBIT 6

Anhydro Group

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Group companies

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[Vetter Maschinenfabrik](#)
[Group Sales Companies](#)

Drytec Ltd

Founded 1982

Field of Technology:
Drying

Business activity:
Industrial plant engineering and supply of:
- Flash dryers
- Flash (Ring) dryers
- Spray dryers

Tailor made plants specifically designed for the individual customer requirements

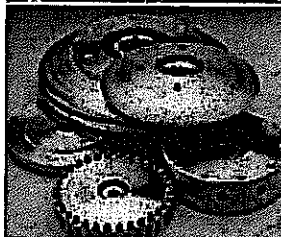
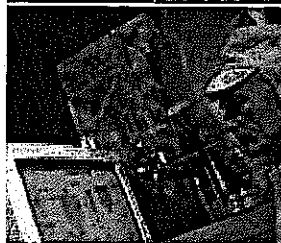
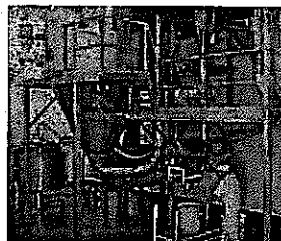
Pilot plant laboratory and facilities for product testing available

Contract spray drying facilities available

Customer reference list:
More than 170 Drytec plants supplied

DRYTEC

Company website:
www.drytecdryers.com



Drytec - Contact us

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EXHIBIT 7

Anhydro Group

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News

[Exhibitions & conferences](#)[News Archive](#)[New global force in industrial evaporation and dry](#)

New global force in industrial evaporation and drying

Anhydro Group realigns its global organization and brand by drawing the member companies in under a single Anhydro brand. The move adds new power and direction to a wide solution portfolio in the fields of industrial evaporation, drying and filtration.

The Anhydro Group, incorporating Anhydro and Simatek in Denmark, Dedert Corporation in the USA, Drytec in the UK, and Vetter Maschinenfabrik in Germany, announced today a realignment of the company organization, uniting the member companies under a single Anhydro brand.

Based in Copenhagen, Denmark, the new company retains the Anhydro name with a redesigned corporate brand profile and a restructured organization designed to provide even faster and more effective solutions to customers all over the world.

Centres of Excellence

"The new customer-focused organization is based on three Centres of Excellence – Dairy & Food, Starch & Ethanol, and Industrial & Pharma" says Anhydro CEO Allan Jørgensen. "Each of these centres unites the relevant technologies, expertise and competences within the organization, directing them specifically at customer needs in the industries they serve."

Supporting the three Centres of Excellence is a fourth Centre of Excellence, Parts & Service. This Centre of Excellence integrates the global Customer Service organization and is dedicated to helping customers to achieve consistent high quality and performance for the lifetime of their Anhydro equipment. The new, state-of-the-art Anhydro Test Centre in Denmark will also support the Centres of Excellence by enabling customers to pilot new processes and optimize existing applications using leading-edge evaporation and drying technology from Anhydro.

Contact: Allan Jørgensen, CEO & President, Anhydro

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EXHIBIT 8

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Not Reported in F.Supp.2d, 2004 WL 503602 (D.Del.)
(Cite as: Not Reported in F.Supp.2d)

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[Briefs and Other Related Documents](#)

Philips Electronics North America Corp. v. Contec Corp.D.Del.,2004.Only the Westlaw citation is currently available.

United States District Court,D. Delaware.

PHILIPS ELECTRONICS NORTH AMERICA CORPORATION and U.S. Philips Corporation,
Plaintiffs,

v.

CONTEC CORPORATION, Compo Micro Tech, Inc., Seoby Electronics Co., Ltd., Remote Solution Co., Ltd., F/K/A Hango Electronics Co., Ltd., Hango Remote Solution, Inc., Defendants.

No. Civ.A. 02-123-KAJ.

March 11, 2004.

[Richard L. Horwitz](#), Potter Anderson & Corroon, LLP, Wilmington, DE, for Plaintiffs.

[Patricia Smink Rogowski](#), Connolly, Bove, Lodge & Hutz, [Jack B. Blumenfeld](#), Morris, Nichols, Arsht & Tunnell, [Kathleen Jennings-Hostetter](#), Oberly & Jennings, [Andre G. Bouchard](#), Bouchard, Margules & Friedlander, [David L. Finger](#), [David L. Finger, Esq.](#), Wilmington, DE, for Defendants.

MEMORANDUM ORDER

[JORDAN, J.](#)

I. INTRODUCTION

*1 This is a patent infringement case. Jurisdiction is proper under [28 U.S.C. § 1338](#). Presently before me is a Motion to Dismiss for Lack of Personal Jurisdiction (the “Motion”) filed by defendant Remote Solution Co., Ltd. (“Remote Solution”) pursuant to [Federal Rule of Civil Procedure 12\(b\)\(2\)](#). (Docket Item [“D.I.”] 105.) For the following reasons, Remote Solution’s Motion will be denied.

II. BACKGROUND

Plaintiffs Philips Electronics North America Corporation and U.S. Philips Corporation (collectively, “Philips”), both Delaware corporations, filed an action on February 12, 2002, alleging that Contec Cor-

poration (“Contec”), also a Delaware corporation, was infringing [U.S. Patent Nos. 4,703,359](#) ^{FN1} (the “’359 patent”) and [5,872,562](#) ^{FN2} (the “’562 patent”), both owned by Philips. ^{FN3} The technology disclosed in the ’359 and ’562 patents is directed to remote control units (“RCUs”) for controlling home appliances from different manufacturers and categories. See [’359 patent](#), col 1, Ins. 15-17; [’562 patent](#), col 1, Ins. 13-16 (attached to D.I. 1 as Exs. A and B). On September 17, 2002, Philips filed an amended complaint joining Remote Solution and others as additional defendants in this action. (D.I.41, 42.) Remote Solution is a Korean corporation with its principal place of business in Kimcheon City, Kyongbuk, Korea. (D.I. 41, Ex. A at ¶ 6.) Philips alleges that Remote Solution “manufactures and designs RCUs that infringe the patents in suit under a manufacturing and purchase agreement with Contec, and is subject to personal jurisdiction in [the District of Delaware].” (*Id.* at ¶ 12.) One of the types of RCUs accused of infringement in this case is Remote Solution’s model RT U49C. (*Id.*)

^{FN1}. The [’359 patent](#), entitled “Universal Remote Control Unit With Model Identification Capability,” names as inventors Robin B. Rumbolt, William R. McIntyre, and Larry E. Goodson. The [’359 patent](#) issued on October 27, 1987 and was assigned to Philips on May 25, 1993. (D.I. 42, Ex. A at ¶ 16.)

^{FN2}. The [’562 patent](#), entitled “Universal Remote Control Transmitter With Simplified Device Identification,” names as inventors Donald P. McConnell and William R. McIntyre. The [’562 patent](#) issued on February 16, 1999 and was assigned to Philips on the same day. (D.I. 42, Ex. A at ¶ 17.)

^{FN3}. Defendants Contec Corporation and Seoby Electronics Co. are no longer involved in this case, having submitted to a Consent Judgment on August 28, 2003. (D.I.258.)

Remote Solution filed its Motion on January 24, 2003, arguing that this court cannot properly exercise

personal jurisdiction over it under Delaware's long-arm statute, [10 Del. C. § 3104](#), or consistent with the requirements of the Due Process Clause. (D.I. 106 at 4, 9.) In support of its Motion, Remote Solution submitted the Declaration of its Director, Suk-Kyu Park. (*Id.*, Ex. A.) In his declaration, Mr. Park stated that Remote Solution does not have any offices, facilities, subsidiaries or employees in Delaware; is not registered to do business in Delaware; has not contracted to supply services or things in Delaware; has no sales force in Delaware; has derived no revenues from sales in Delaware; does not own any property, assets or bank accounts in Delaware or maintain any offices in Delaware. (*Id.* ¶ 4, 7-10.) According to Mr. Park, Contec is Remote Solution's only customer for the accused RT U49C RCU. (*Id.* ¶ 5.) Mr. Park further stated that Remote Solution maintains a website to provide information about its products, but Remote Solution does not accept orders through its website. (*Id.* ¶ 12.)

After Remote Solution filed its Motion, the parties conducted jurisdictional and substantive discovery until September 15, 2003. (D.I. 286 at 2.) The following facts are taken from Philips' opposition to Remote Solution's Motion. (D.I.286.) Since Philips' factual allegations are not directly controverted, they are taken as true for purposes of determining jurisdiction in this court. See [Beverly Hills Fan Co. V. Royal Sovereign Corp.](#), 21 F.3d 1558, 1563 (Fed.Cir.1994).

*2 In 1997, Remote Solution decided to expand its RCU sales by entering the United States consumer market. (*Id.* at 5 (citing deposition testimony of Suk-Kyu Park at D.I. 287, Ex. 14).) To that end, Remote Solution hired David Ahn, a native Korean living in California, as its exclusive sales agent in the United States. (*Id.*.) Mr. Ahn established Hango Electronics, Inc., d/b/a Remote Solution ("HEI") in California, for the sole purpose of soliciting customers in the United States on behalf of Remote Solution. (*Id.* (citing deposition testimony of David Ahn at D.I. 287, Ex. 3).) HEI is an independent corporation of which Mr. Ahn is the sole owner and employee. (*Id.*)

In 1999, HEI entered into a Manufacturing and Purchase Agreement with Contec, L.P., a New York limited partnership, wherein Contec L.P. retained HEI to

design and manufacture RCUs and sell them to Contec L.P. ^{FN4} (D.I. 287, Ex. 15 at 1.) HEI also agreed to "defend any suit or proceeding brought against Contec L.P. to the extent that such suit or proceeding is based on a claim that the [RCUs] constitute an infringement of any valid United States ... patent...." (*Id.* at 3.) In 2000, with Mr. Ahn's consent, HEI changed its name to Remote Solution, the name under which Mr. Ahn conducts business in California. (*Id.* at 6.)

^{FN4}. The relationship between Contec L.P. and Contec Corporation was fleshed out at oral argument. At some point in time, Contec L.P., a New York entity, merged with Contec LLC, another New York entity, which then merged with Contec Corporation, a Delaware entity. (D.I. 338 at 67:16-25.)

According to Mr. Ahn, Remote Solution's business plan was to sell as many RCUs as possible. (*Id.*) As a result of his extensive efforts to market the RCUs, Mr. Ahn acquired Contec, TiVo, Inc., Harman Kardon, Inc. and Hy-Tek Manufacturing Co., Inc. as customers for Remote Solution. (*Id.*) Remote Solution does not design its own remote controls, rather, it manufactures them according to its customers' specifications. (*Id.* at 7.) Contec is a Delaware corporation with its principal place of business in New York, and its primary business is to sell refurbished cable set top boxes and RCUs to major cable companies in the United States. (*Id.* at 10.) Contec's customers include Comcast, which provides cable television services to residents of Delaware. (*Id.*) Generally, Remote Solution knows who Contec's customers are because Remote Solution marks the RCUs with those customer's logos. (*Id.*; D.I. 287, Ex. 10.) Remote Solution knew that Comcast was one of Contec's customers, as it sent drawings of the Comcast logo to Contec via email on April 24, 2002. (D.I.287, Ex. 36.)

In 2000, Remote Solution established a subsidiary in the United States, Hango Remote Solution, Inc. ("Hango"). (D.I. 286 at 8.) Remote Solution was a 70% shareholder in Hango and Mr. Ahn owned the remaining 30%. (*Id.*) About half of Hango's revenue

came from sales of Remote Solution's RCUs, Hango's primary business was marketing an MP3 player called Personal Jukebox. (*Id.* at 8-9.) Ultimately, however, Hango's business failed, and the company folded in December 2002. (*Id.* at 9.) Thereafter, Remote Solution began litigating this case on Hango's behalf as well as its own, filing an answer to the complaint and a motion to amend the answer to include a crossclaim against Contec for indemnification in the event Hango is found liable for patent infringement. (*Id.* at 9; *see also* D.I. 287, Ex. 2 at 8.)

*3 Remote Solution has sold at least 1,969,849 of the accused RCUs in the United States since November 22, 2000. (D.I. 286 at 2 (citing Expert Report of Kerry Ruoff at D.I. 287, Ex. 1).) Based on the records obtained from TiVo, one of Remote Solution's customers, Philips discovered that at least 2,000 infringing RCUs manufactured by Remote Solution for TiVo have been sold or used in Delaware since March 31, 1999. (D.I. 286 at 3, 13.) According to TiVo's records, 1,738 residents of Delaware subscribed to TiVo's service between March 31, 1999 and May 28, 2003. (*Id.* (citing Declaration of Matthew P. Zinn at D.I. 287, Ex. 39 ¶ 12).) Because TiVo sells its digital video recorders ("DVRs") bundled with the RCUs manufactured by Remote Solution, it is likely that more than 1,500 Remote Solution RCUs are being used for TiVo recorders in Delaware today. (*Id.* (citing D.I. 287, Ex. 39 ¶¶ 6, 17).) Furthermore, since January 1, 2000, more than 1,000 DVRs bundled with RCUs manufactured by Remote Solution were sold in Delaware at two retailers, specifically, 654 were sold at BestBuy and 406 were sold at Circuit City. (*Id.* (citing Declaration of Scott Jacobi at D.I. 287, Ex. 40 ¶ 7; Declaration of Mark Smucker at D.I. 287, Ex. 41 ¶ 9).)

III. DISCUSSION

When a non-resident defendant's motion to dismiss challenges personal jurisdiction, the plaintiff has the burden to show the basis for the court's jurisdiction over that defendant. *Intel Corp. v. Broadcom Corp.*, 167 F.Supp.2d 692, 699 (D.Del.2001) (citing *Wright v. American Home Products*, 768 A.2d 518, 526 (Del.Super.2000)). To satisfy this burden, Philips must make a *prima facie* showing that this court may

exercise personal jurisdiction over Remote Solution. *Id.* After discovery has begun, the plaintiff must sustain this burden by "establishing jurisdictional facts through sworn affidavits or other competent evidence." *Id.* (citing *Time Share Vacation Club v. Atlantic Resorts, Ltd.*, 735 F.2d 61, 66 n. 9 (3d Cir.1984)).

Determining whether Remote Solution is subject to personal jurisdiction requires a two-part analysis. *Id.* at 700; *see also* *Siemens Aktiengesellschaft v. LG Semicon Co., Ltd.*, 69 F.Supp.2d 622, 624 (D.Del.1999). First, I must determine whether the language of Delaware's long-arm statute, 10 Del. C. § 3104(c), reaches Remote Solution. *Broadcom*, 167 F.Supp. at 700. Second, if I find that Remote Solution's conduct gives rise to personal jurisdiction under the long-arm statute, I must then determine whether subjecting Remote Solution to jurisdiction in Delaware would comport with the Due Process Clause of the Fourteenth Amendment to the United States Constitution. *Id.* (citing *Intel Corp. v. Silicon Storage Tech, Inc.*, 20 F.Supp.2d 690, 694 (D.Del.1998)).

A. Jurisdiction over Remote Solution is Proper Under § 3104(c)(1) of Delaware's Long-Arm Statute

Philips contends that Remote Solution is subject to jurisdiction under sections 3104(c)(1) and (c)(4) of the Delaware long-arm statute (D.I. 286 at 17, 20), which provide:

*4 (c) As to a cause of action brought by any person arising from any of the acts enumerated in this section, a court may exercise personal jurisdiction over any nonresident, or a personal representative, who in person or through an agent:

* * *

(1) Transacts business or performs any character of work or service in the State;

* * *

(4) Causes tortious injury in the State or outside of the State by an act or omission outside of the State if the person regularly does or solicits business, engages in any other persistent course of conduct in the State or derives substantial revenue from services, or things used or consumed in the State....

10 Del. C. §§ 3104(c)(1) & (c)(4). Delaware state courts have interpreted the “transacting business” provision of § 3104(c)(1) as a specific jurisdiction provision that requires a nexus between the cause of action and the conduct used as a basis for jurisdiction. See LaNuova D & B S.p.A. v. Bowe Co., 513 A.2d 764, 768 (Del.1986). The Federal Circuit has held that, where a defendant has “purposefully shipped the accused [product] into [the forum state] through an established distribution channel ... [n]o more is usually required to establish specific jurisdiction.” Beverly Hills Fan, 21 F.3d at 1564. Moreover, in order to meet the requirements of § 3104(c)(1), Remote Solution's actions must be directed at residents of Delaware and the protection of Delaware laws. See Thorn EMI N. Am., Inc. v. Micron Tech., Inc., 821 F.Supp. 272, 274 (D.Del.1993) (citing Sears, Roebuck & Co. v. Sears, 744 F.Supp. 1289, 1292 (D.Del.1990)).

Philips argues that Remote Solution has shipped the accused RCUs into an established distribution channel as part of a general business plan that results in sales of the accused products in Delaware. (D.I. 286 at 18.) In response, Remote Solution argues that it merely had a general plan to serve the national market and that its activities were not directed specifically toward Delaware. (D.I. 309 at 2, 4.)

I find that Philips has presented competent evidence that an established distribution channel exists through which accused RCUs manufactured by Remote Solution are shipped to, distributed, and sold in Delaware. First, the evidence shows that Remote Solution and Contec have enjoyed a close business relationship since at least as early as 1999, when, in a manufacturing and purchase agreement governed by New York law, Remote Solution agreed to defend one of Contec's predecessors against any claims of patent infringement. Furthermore, Remote Solution is seeking indemnification from Contec for Hango, Remote Solution's defunct subsidiary, in the event Hango is found liable for patent infringement in this case. Philips has also presented competent evidence that Remote Solution knew that Comcast, a major provider of cable television services in the State of Delaware, was one of Contec's customers for the accused RCU. Given all of these facts, and in light of

Remote Solution's ongoing business relationship with Contec, it was reasonably foreseeable that the accused RCUs would make their way into the Delaware market through Contec's customers. Documents obtained from Remote Solution show that Contec was selling the accused RCUs to Comcast, such that Remote Solution knew or should have known that the accused RCUs were being sold or distributed in Delaware. See Thorn EMI, 821 F.Supp. at 275-76.

*5 Finally, Philips has competent evidence that the accused RCUs are present in Delaware in large numbers, and were present in Delaware prior to its filing suit, as a result of Remote Solution manufacturing the accused RCUs for TiVo. Because Philips has presented competent evidence of an established distribution channel that caused the accused RCUs to be sold and distributed in Delaware, and that the accused RCUs are actually present in Delaware, I find that jurisdiction over Remote Solution is proper under § 3104(c)(1), and I need not address the issue of whether jurisdiction over Remote Solution is proper under § 3104(c)(4).^{FN5}

^{FN5}. Remote Solutions relies upon Commissariat A L'Energie Atomique v. Chi Mei Optoelectronics Corp., 293 F.Supp.2d 423, reconsideration denied, 293 F.Supp.2d 430 (D.Del.2003) (granting defendant's motion to dismiss for lack of personal jurisdiction in patent infringement case) in support of its motion to dismiss. There are key factual distinctions between this case and *Commissariat*. First, unlike the plaintiff in *Commissariat*, Philips requested and conducted jurisdictional discovery which uncovered evidence of actual sales and the presence of the accused device in Delaware prior and subsequent to the date the complaint was filed, evidence that was lacking in *Commissariat*. Second, that Remote Solution (1) agreed to defend a predecessor of Contec from patent infringement and (2) is seeking indemnification from Contec should Hango be found liable for patent infringement is evidence of Remote Solution's close business relationship with Contec, and its knowledge of the established distribution channel through

which its products were being sent into Delaware. Thus, the quantum of evidence upon which to rest personal jurisdiction in this case is significantly greater than in *Commissariat*.

B. Exercising Jurisdiction over Remote Solution in Delaware Comports With the Requirements of the Due Process Clause

Due process requires that sufficient minimum contacts exist between the defendant and the forum state to satisfy “traditional notions of fair play and substantial justice.” *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 90 L.Ed. 95 (1945). In considering whether jurisdiction may extend to a defendant, courts should primarily consider whether the defendant has purposely availed itself of the forum state’s law, *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985), and whether the defendant reasonably could have anticipated being haled into the courts of the forum state, *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291-92, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980). Courts should also consider the burden imposed on the defendant by having to litigate in a foreign forum, as well as the interests of the plaintiff and the forum state. *Asahi Metal Industry Co. v. Superior Court of California*, 480 U.S. 102, 114, 107 S.Ct. 1026, 94 L.Ed.2d 92 (1987).

In this case, the accused RCUs arrived in Delaware through Remote Solution’s purposeful shipment of them through an established distribution channel. See *Beverly Hills Fan*, 21 F.3d at 1565. Philips has “stated all of the necessary ingredients for an exercise of jurisdiction consonant with the requirements of due process,” namely, that Remote Solution placed the accused products in the stream of commerce, that it knew the likely destination of the products, and that its conduct and connections with Delaware were such that they should reasonably have anticipated being brought into court here. *Id.* at 1566.

Finally, litigating this case in Delaware would not place such a burden on Remote Solution as to offend traditional notions of fair play and substantial justice, especially since Remote Solution has executed an

agreement to defend Contec L.P. against all claims of patent infringement, which proves that Remote Solution was well aware of and prepared for the possibility of litigation where Contec did business, including Delaware. Nor has Remote Solution shown that it does not have the resources to fairly litigate this case in Delaware. See *Thorn EMI*, 821 F.Supp. at 276. Moreover, “Delaware has an abiding interest in protecting the property rights of its residents[,]” *id.*, including corporate citizens such as Philips. Thus, exercising jurisdiction over Remote Solution in this case comports with the requirements of the Due Process Clause.

IV. CONCLUSION

*6 For these reasons, it is hereby ORDERED that Remote Solution’s Motion to Dismiss for Lack of Personal Jurisdiction (D.I.105) is DENIED.

D.Del.,2004.

Philips Electronics North America Corp. v. Contec Corp.

Not Reported in F.Supp.2d, 2004 WL 503602 (D.Del.)

Briefs and Other Related Documents ([Back to top](#))

- [2005 WL 2385623](#) (Trial Motion, Memorandum and Affidavit) Reply Brief in Support of the Joint Motion for Summary Judgment of Defendants Remote Solution Co, Ltd. and Hango Remote Solution, Inc. (Jul. 29, 2005) Original Image of this Document (PDF)
- [2005 WL 2385622](#) (Trial Motion, Memorandum and Affidavit) Answering Brief of Defendants Remote Solution Co, Ltd. and Hango Remote Solution, Inc. in Opposition to Plaintiffs’ Motion for Summary Judgment (Jul. 20, 2005) Original Image of this Document (PDF)
- [1:02cv00123](#) (Docket) (Feb. 12, 2002)

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